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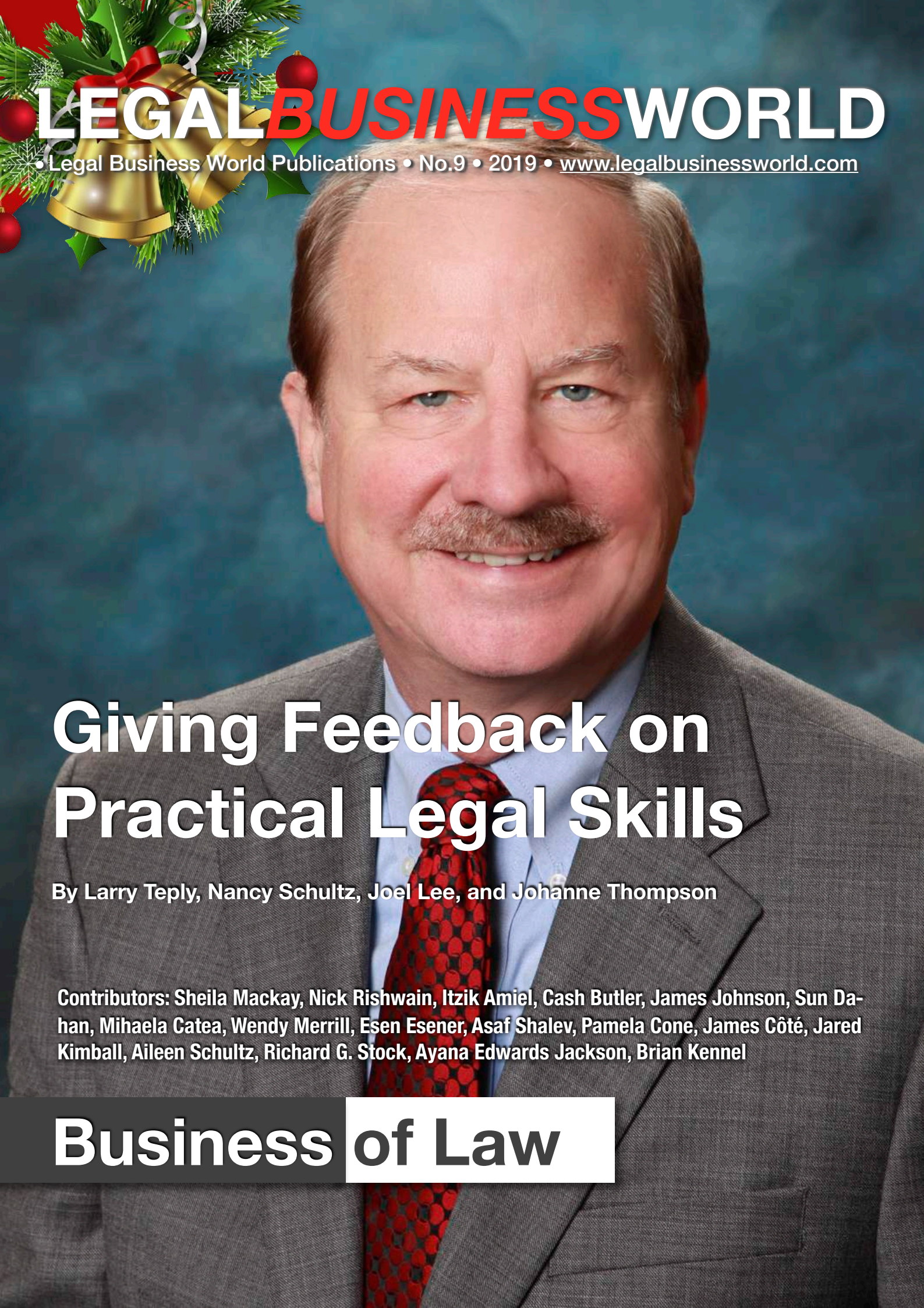

Giving Feedback on Practical Legal Skills

By Larry Teply, Nancy Schultz, Joel Lee, and Johanne Thompson

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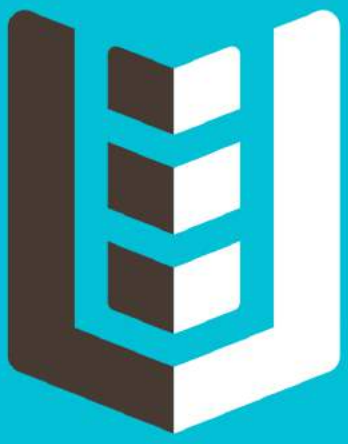

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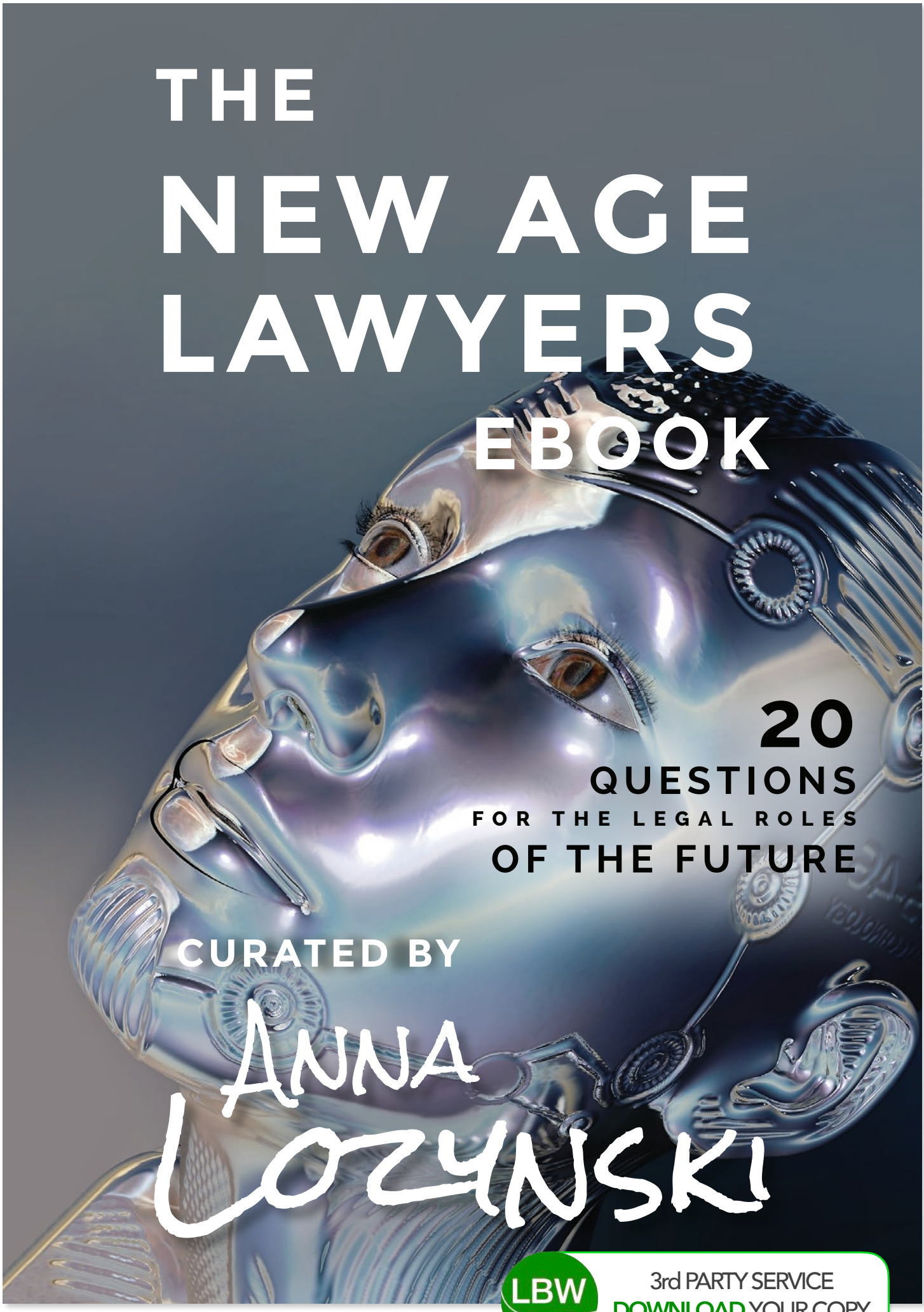
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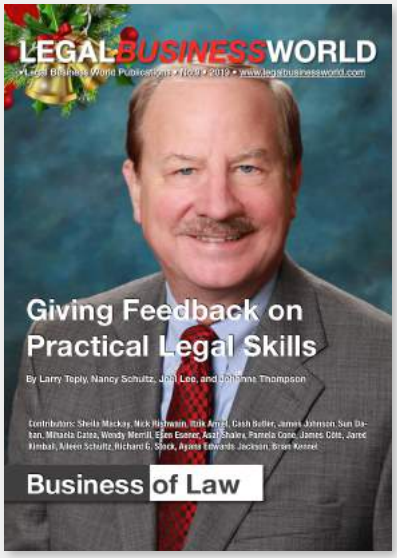

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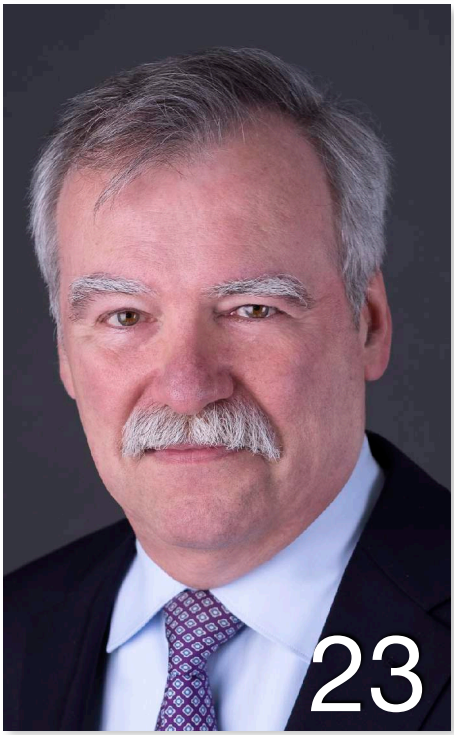

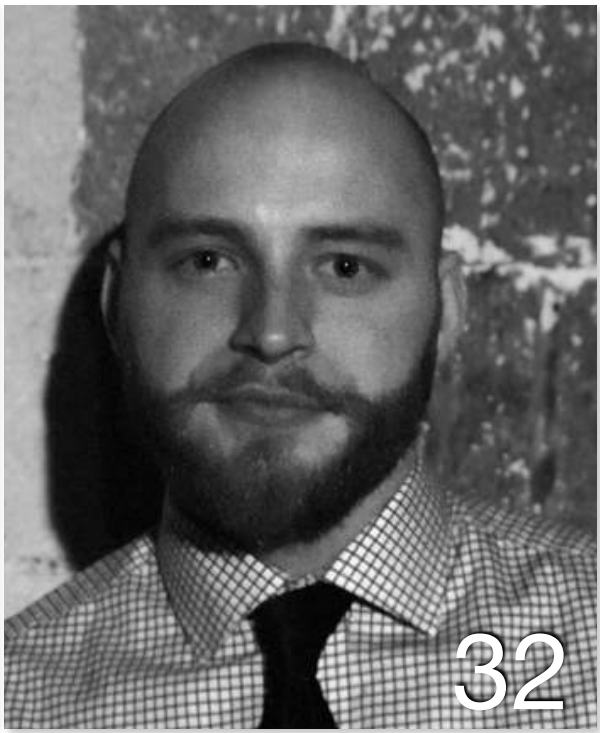

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Giving Feedback on Practical Legal Skills

By Professor Larry Teply, Creighton Law School in Omaha, Nebraska, USA; Professor Nancy Schultz, Chapman University, Dale E. Fowler School of Law, Orange, California, USA; Professor Joel Lee, National University of Singapore, Faculty of Law, Singapore; and Senior Lecturer Johanne Thompson, Law School of the University of Kent, Canterbury, England, UK.

Lawyers in law firms, professors in law schools, judges in legal skills competitions, supervisors in legal clinics, and other legal professionals are often called upon to give feedback on another person's practical legal skills. Done well, such feedback is an excellent tool for learning. But it is fair to say that there is an art to giving feedback, and it is certainly an art worth developing and refining. Yet many of those involved in assessing legal skills have little or no formal training in how to provide effective feedback to young lawyers, trainees, students, and others. The fields of medicine, nursing, social work, teacher education, and business all seem to be far ahead of the legal field in focusing on how to give effective feedback on practical skills.

This article presents an overview of the art of giving feedback on both written and oral practical legal skills. In doing so, it assesses the suggestions offered by commentators and draws heavily on empirical and academic work in non-legal fields as well as experience gained in clinical legal education settings and legal skills competitions. Based on this analysis, it recommends "best practices" for the legal profession to follow for giving effective feedback on legal skills performances.

The Art of Giving Feedback on Practical Legal Skills

Giving effective feedback on practical legal skills performances is not easy. In fact, poorly delivered oral feedback by judges is one of the most frequently raised complaints by the participants (and coaches) in legal skills competitions. It is also a central issue for those in clinical settings. Effective feedback is both positive and constructively negative. It is readily apparent that young lawyers, law students, and even lawyers with substantial experience all often find it difficult to hear both the positive and negative equally. Persons receiving feedback frequently tend to discount one or the other.

Furthermore, both giving as well as receiving feedback can generate strong emotions. As a result, persons giving feedback may be tempted to take refuge in being nice and bland. Persons receiving this type of feedback may rightly feel frustrated because they often internally know that there is room for improvement. In contrast, if persons giving feedback have had a strong negative reaction to the skills performance, especially when moral or ethical issues are involved, the feedback may become extremely harsh, both in terms of tone and substantive content. As a result, persons receiving feedback may become angry and defensive, or even depressed. Others receiving feedback may have difficulty in accepting positive feedback—becoming embarrassed or resistant. Cross-cultural factors, including issues of losing face, norms of direct or indirect communication, and ethno-centrism, can easily exacerbate the task. Those factors, of course, make giving effective feedback even more difficult.

What are the Overall Goals of Feedback?

The basic overall goal of giving feedback is to increase the recipient's self-awareness. As commentators frequently recognize, feedback is really all about the communication of feelings and perceptions by one individual to another about the latter's behavior, legal skills, and style of working. The main function of feedback is to provide data about a person's behavior and its effect on others. The objective of feedback is not to intimidate the receiver, because intimidation frightens, inhibits, and discourages the recipient.

What are the Characteristics of Good Feedback?

The characteristics of good feedback can be summed up by the following list of adjectives: Good feedback is

- Balanced
- Clear
- Consistent
- Constructive
- Honest
- Objective
- Positively intended
- Sensitive
- Supportive in tone
- Sincere

When Should You Give Feedback?
To be effective, it is important to aim for the right time to give feedback on practical skills performances. Commentators agree that spontaneous feedback tends to cause trouble, especially when emotions are running high. It is better to wait until everyone has calmed down. (In some circumstances, like at competitions, this may not be possible; thus, giving feedback at competitions may require extra sensitivity.) When possible, give the recipient a reasonable amount of time to self-reflect and self-assess. Likewise, it is important to give feedback only when you are prepared. That means having your own emotions under control, having time to reflect on what you are going to say, and planning how to say it.

On the other hand, waiting too long to give feedback can cause serious problems. Doing so can cause what commentators describe as a psychological "disconnect" between the actual performance and the feedback. Instead, feedback needs to be timely, which means a time when everyone can still remember what happened, but not so soon that emotions are running high. According to a number of commentators, one way to tell if you waited too long is if the recipient looks surprised by your feedback.

How Should You Arrange for the Feedback Session?
First of all, you should inform the recipient in advance of the feedback session. In addition, select a good location for giving the feedback. As one commentator has aptly stated, while public recognition is appreciated, public scrutiny is not. Furthermore, public feedback sessions have the potential of causing the recipient to lose face—a powerful barrier to receiving feedback positively. Thus, you should select a "safe" place to talk—one where you won't be interrupted or overheard. (Again, in certain situations, the location may not be flexible; giving feedback in public may not be optional, but it can be done positively and constructively in a way that will minimize embarrassment or negative reactions.)

Some commentators recommend that you should choose a private but visible setting, such as a glass cubicle or glass window conference room, where you and the other person are physically comfortable. Some commentators also suggest that sitting beside the recipient will minimize a position of power on the part of the person giving feedback, but the utility of this suggestion is likely to depend on social and cultural factors.

How Should You Prepare for the Feedback Session?
Many commentators recommend that you should conduct a feedback session only when you are fully prepared. Planning helps avoid generating emotional responses and raised defenses. There are three keys to organizing your preparation. First, decide what you want to accomplish at the session. You don't want to overwhelm the recipient with a "shotgun" approach. Instead, consider carefully what needs to be discussed, how it should be discussed, and in what depth. Second, make sure you make a specific list of the questions you plan to ask the recipient before giving your own insights and feedback. Third, collect the back-up material supporting the feedback. Importantly, you want to try to find specific examples or illustrations to support your comments. If the feedback is given in a teaching context, use video if it is available.

Don't assume that more-is-better; focus on only a few issues. Those issues should be the core ones, not minor symptoms. Relate feedback to performance, behaviors, and outcomes. Emphasize correctable deficiencies. Do not be tempted to discuss aspects of personality, intelligence, appearance, or anything else other than behavior. The consensus is that feedback should be weighted toward the positive, but it should include enough negative to make the comments valid and encourage the recipients to do better.

What Are the Specific Recommended "Dos" in Conducting the Feedback Session?

A survey of the specific recommendations offered by commentators reveals the following as their principal suggestions:

- Put yourself in the feedback recipient's shoes and treat them as you would like to be treated.
- Use receptive, positive body language.
- Be sure to start with questions rather than leading with your assertions and insights.
- Make the session a two-way conversation. One widely recommended approach is to have the performer describe what went well, followed by the person giving feedback stating what the performer did well; then the performer identifies what could be improved, followed by the person giving feedback identifying areas for improvement and how to achieve that improvement.
- Acknowledge and reinforce exemplary behavior.
- Use precise, descriptive, and neutral wording. Effective performance feedback foregoes easy clichés. Give the feedback from your perspective; use "I" statements. For example, use phrases like, "What is your reaction to this?" or "Is this a fair representation of what happened?" Also, try "I've noticed that" or "I realize that" to take the blame out of the situation. Presenting feedback as your opinion makes it much easier for the recipient to hear and accept it, even if you are giving negative feedback. Another way to soften negative feedback is to say, "I feel . . ." and "It's my understanding that . . ."
- Use concrete examples, especially if the feedback is negative. Emphasize correctable deficiencies. Provide suggestions and opinions on how problems identified can be resolved, with alternatives if possible, so that the recipient has choices to make to change his behavior, thinking or attitude.
- Try using visual aids during practice sessions. If you are helping someone prepare for asking questions of a witness or practicing an oral argument, you can use stuffed or preserved animals representing speech patterns or habits that need to be avoided. For example, one of the authors (Professor Schultz) uses an alligator head to remind a questioner to stop beginning each question with an "and." As she aptly states, "I only have to explain it once—after that, they see it and then they start to hear the 'ands,' which is the first step to eliminating them."
- Labels do serve some useful functions in feedback. As two leading commentators have aptly observed, "Like the soup label, they give us a general idea of the topic, and they can act as shorthand when we return to that topic later. But the label is not the meal.

If you use a label, it could be followed by "Let me describe what I mean and you can ask me questions to see if I'm making sense." For example, if you tell someone they acted "unprofessionally," what does that mean exactly? Were they too loud, too friendly, too casual, too flip, or too poorly dressed; did they violate ethical provisions, etc.?

- Overcome defensiveness by returning to your valid examples until the recipient is ready to accept responsibility and work out a plan to promote change. If you don't hear the acknowledgement, continue to present evidence you can use to convince the recipient that a problem exists and that his or her performance or behavior needs to change. Provide suggestions and opinions on how problems identified can be resolved, with alternatives if possible, so that the recipient has choices to make to change his behavior, thinking or attitude. But don't push anxiety into paralysis
- Target unconscious drivers by stating what the suggestion would accomplish (the benefit) and what problem the suggestion would prevent or avoid. Critiquing too many areas of weakness may make the recipient feel overwhelmed and deflated. Too much feedback, whether positive or negative, can generate cognitive overload and a decreased perception in the student of teacher confidence in their ability and a corresponding decrease in their own perceptions of control. Remember that focusing on evidence and the effects of performance prevents you from being distracted. If the feedback recipient tries to steer the conversation to other topics or other people's actions, take the time to listen and consider alternative opportunities for improvement or table other topics that are brought up for coverage in a separate meeting.
- Recipients hear a very different message when controlling words such as "must," "should," and "do not" are used than when they hear supportive words or phrases, such as "consider" or "you might want to try."
- Many commentators recommend some form of "feedback sandwich." The method consists of positive comments or praise, followed by corrective feedback, followed by more positive comments or praise. In other words, the corrective feedback is "sandwiched" between two layers of praise.
- In the United States and most western cultures, direct communication is usually the preferred style. "Direct" communicators give and take the feedback at "face value." In other cultures, including African and some Asian countries, indirect communication is more prevalent. Be especially careful when the feedback is given in a cross-cultural context, especially when the communication styles of the parties differ. If the person giving feedback uses "indirect" communication (in which the meaning is more subtle) and the recipient is expecting direct communication, it is likely not to be understood or beneficial.
- Commentators recognize that it is possible to use peer observation as part of debriefing. However, the recipients may feel that peer responses are as uninformed as their own and not really trustworthy; thus, it is widely suggested that peer feedback needs to be coupled with your own feedback.

What Should Be Avoided in Giving Feedback?

A review of what commentators suggest to avoid in giving feedback is a long one. Many of the suggestions are obvious, but they are worth repeating because they serve as reminders of how things can go wrong.

- Avoid giving feedback when you are angry.
- Avoid labeling the person.
- Avoid absolute terms, words, and overgeneralizations, such as “you always . . .” or “you never . . .” unless it is true in every instance.
- Avoid words like "never" and "always" because the person will typically become defensive.
- Avoid insulting and hostile language.
- Avoid words such as “should,” “could,” “must,” or “ought to.”
- Avoid blanket statements, such as “you need to do better.”
- Avoid lecturing with an arrogant tone.
- Avoid belittling the recipient.
- Avoid shaming.
- Avoid making the recipient feel insignificant and incapable.
- Avoid personal attacks and blaming.
- Avoid inserting “but” after a positive remark (use “yet”).
- Avoid conclusory evaluative language—such as “you are wrong,” “that idea was stupid,” “that was the worst oral argument I have ever heard,” “that document was a total disaster,” etc.
- Avoid using generic terms such as “excellent,” “well done,” and “great job” because they tend to be meaningless, especially if used constantly in feedback sessions; while saying something like "great job!" or "fantastic work!" gives appreciation, this kind of general compliment does not tell the person what he or she has done right, in other words, what behaviors to repeat or increase. Consider, for example, which of the following would be more helpful: "Good work!" or "I appreciate your professional approach. This was a difficult and demanding assignment, and you did thorough research and met our deadlines, even though I know it meant working late a lot of nights. Your reports were clear, well organized and carefully written--just what we needed." Also avoid nodding in approval all the way through the presentation or words of encouragement; that will likely confuse the recipient when you then deliver negative feedback.
- Avoid arguing.
- Avoid mixing cathartic goals (providing psychological relief through an open expression of strong emotions) with catalytic goals (causing change to happen more quickly) in the same feedback session.
- Avoid overmixing praise and criticism.
- Avoid patronizing.
- Avoid fastening and dwelling on a single error, especially if it is minor. A ten-minute public lecture about an error or even a two-minute private response to something that was not intended to be the assignment is likely to be discounted.
- Avoid overwhelming the recipients with instructions and suggestions to the point where they miss crucial information. Remember: do not go too far, feedback is not psychotherapy, do not go too deep, stay task focused, do not stay too long in one emotional place, and empowerment means moving forward. Similarly, a document returned covered with red ink is destroyed by the process that was supposed to make it better.

How Should You End the Feedback Session?

Several commentators suggest ending with a brief summary, followed by a reminder of the key suggestions or an action plan for improvement. During the conclusion, try to make the recipient feel cared for and valued. Help the recipient see that your feedback is actually a "gift." Finally, after the session is over, reflect after the feedback session: What seemed to go well? What should be changed the next time? What new strategies could be adopted for future sessions?

Authors' Note

The substance of this article has been extracted from a presentation by the authors at the Global Legal Skills Conference on December 11, 2018 in Melbourne, Australia. For purposes of this present article, academic citations and references have been omitted.

About the Authors

Professor Larry Teply holds the Senator Allen A. Sekt Endowed Chair in Law at Creighton Law School in Omaha, Nebraska USA. He teaches Civil Procedure and Negotiation. He has long been involved in teaching lawyering skills and coaching students in skills competitions. He is the author of West's Legal Negotiation in a Nutshell (3d ed. 2016) (most recently translated into Chinese). He has served as the Chair of the American Bar Association's Negotiation Competition Subcommittee (responsible for the American negotiation competition for law students) and as the Chair of the entire ABA Competitions Committee (administering moot court, arbitration, and client interviewing competitions as well). He is one of the cofounders of the International Negotiation Competition for Law Students.

Professor Nancy Schultz is the Director of the Competitions and Alternative Dispute Resolution Programs at Dale E. Fowler School of Law at Chapman University in Orange, California USA. She coaches teams for interscholastic competitions in trial and appellate advocacy, arbitration, pretrial advocacy, mediation, negotiations, and client counseling. She has taught Client Interviewing and Counseling, Negotiations, Mediation, Resolving Disputes Across Cultures, Advocacy, Legal Research and Writing, Legal Writing Skills, Legal Drafting, Civil Procedure, and Advanced Legal Analysis. She has served on the ABA-Law Student Division Competitions Committee for several years. Currently, she serves on the International Client Counseling Competition Committee and the International Negotiation Competition Committee, where she is the North American representative to the Executive Committee. She has also chaired the International Law School Mediation Tournament.

Professor Joel Lee is a Professor of Law on the Faculty of Law at the National University of Singapore. He was one of the pioneers of the teaching of negotiation and mediation and has played a significant role in furthering the development of mediation in Singapore, not just in education, but also in practice. He is the principal mediator with, and the Training Director of, the Singapore Mediation Centre. His principal areas of interest are teaching methodology, appropriate dispute resolution, negotiation, mediation, conflict of laws, and neuro-linguistics.

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Johanne Thompson is a Senior Lecturer at the Law School of University of Kent in Canterbury, England. She is Director of Education for Stage 1 and Deputy Director of Admissions. She convenes and teaches, inter alia, criminal law to LLB students, advanced criminal law to Senior Status and Joint Honours students and also the Certificate in Law Route to LLB students. She is deeply involved in legal skills and convenes the Client Interviewing module. Her teaching skills are highly regarded. Externally, she is the Regional Director for the South East Region for the Client Interviewing for England and Wales. She regularly judges both national and international competitions for client interviewing, mooting, and negotiation.

THE LEGAL INNOVATION EVENT

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Throughout the event 4 themes are deepened. So far the next themes are planned:

Legal Ops
Optimising the delivery of legal services is of key importance for high-performing legal departments. For outside counsel on the other hand, knowledge about how this optimisation can be achieved is invaluable for strengthening the relationship. At Lexpo'20 you will hear how innovative legal departments operate, learn from their leaders and discover the latest trends, innovations and technologies that will help you increase strong sustainable effectiveness as well as strong sustainable relationships!

Legaltech
In recent years, an ever-increasing number of legaltech applications and services have been launched by an equal number of (startup) companies. The vast majority of these applications are point solutions, solving a small but specific issue in the practice of law. How can law firms and in-house legal departments formulate strategies on how to deal with the overwhelming amount of new tools available, how to make the right choice between competing products and how to guarantee user adoption and overall success?

Cyber Security - the human factor
Last year cybersecurity was one of the Lexpo themes and we highlighted ways to improve security while keeping everyone happy. This year we will deep dive into the weakest link of the security chain: you! The human factor is a key concern for law firms trying to keep their networks and clients' data secure. Most cyberattacks are designed to take advantage of normal human behavior rather than flaws in software. Lexpo'20 will feature eye-opening sessions explaining the modus operandi of social engineers.

Theme 4: to be announced
The fourth theme will be announced in January.

Lexpo'20 - save the date!

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12 Elements of Emotional Intelligence for Project Managers

By Ayana Edwards Jackson, Legal Project Manager

The line between good and great project managers may be drawn firmly in the sand of Emotional Intelligence (EI). The primary elements of EI as outlined by Daniel Goleman and Richard E. Boyatzis in *Emotional Intelligence Has 12 Elements. Which Do You Need to Work On?* (2017 (Harvard Business Review) are Self-Awareness, Self-Management, Social Awareness and Relationship Management. How can EI, and mastery of these four broader elements, help create stronger Legal Project Management (LPM) teams?

Generally, high levels of EI help project managers run more effective meetings, maintain strong team engagement while executing project work, produce higher quality deliverables and navigate Legal nuances in a manner that feels fluid and competent. While honing in on EI-sparked signals, Legal Project Managers (LPMs) should be able to accumulate realistic perspectives of the current organizational climate - and develop tailored action plans or approaches that are well-suited for that particular project environment. Further, leveraging EI can help LPMs better assign project tasks and design workable process flows that are considerate to the evolving needs of the project team.

Emotional Intelligence Domains and Competencies

SELF-AWARENESS	SELF-MANAGEMENT	SOCIAL AWARENESS	RELATIONSHIP MANAGEMENT
Emotional self-awareness	Emotional self-control	Empathy	Influence
	Adaptability		Coach and mentor
	Achievement orientation	Organizational awareness	Conflict management
	Positive outlook		Teamwork
			Inspirational leadership

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Self-Awareness

Captured under the domain of Self-Awareness is the competency of Emotional Self-Awareness. From a LPM perspective, this entails individual project managers adequately assessing their own needs and objectives and how those conclusions may impact the project work. For example, is the LPM currently overburdened with a competing project and unable to provide the project teams proper attention? Or, are there Legal concepts associated with the project work not being grasped, creating lapses during project planning and execution? Honest assessments about the internal work required on behalf of an LPM to lead a project is vital.

Self-Management

Self-Management differs from Self-Awareness in that it encompasses Emotional Self-Control, Adaptability, Achievement Orientation, and Positive Outlook. Adaptability is an especially important trait for Legal Project Managers, as project needs can and do often shift - many times impacting the project's priorities and timing as well. Changes throughout a project's lifecycle and project manager's role are often unavoidable across industries, making adaptability valuable within LPM work due to the nuances involved in interpreting the law and providing Legal guidance.

It can be argued that Emotional Self-Control is most useful for LPMs during meetings and ongoing Legal discussions, as disagreements can arise while arriving at appropriate Legal determinations that may either impact or stall the project work. It is an important part of the Legal Project Manager's role to navigate any challenging areas where the project team and/or Attorneys are not aligned and guide the group back towards an actionable decision. In short, an LPM who is able to connect Emotional Self-Control to Achievement Orientation can help create a smooth project experience for the entire team.

Additionally, maintaining a Positive Outlook can be valuable in LPM work when used as a vehicle to drive engagement and motivate the project team. Genuine and well-informed belief in the best possible outcomes for the project and project team can become contagious and create ripple effects of positivity and great work.

Social Awareness
The Social Awareness domain consists of Empathy and Organizational Awareness. Social Awareness asks are we present and connected to what is going on around us? Empathy asks if we are able to understand and care about the instances we are observing? A solid LPM will combine this information to assess potential impacts to the project work. When targeting aspects of Organizational Awareness, more specific questions such as, has there been a recent organizational restructuring - or Legal matter or regulatory concern recently that may impact the project team? Taking these variables into account when developing project plans and executing on project work helps boost the probability of project success.

Relationship Management
Influence, Coach and Mentor, Conflict Management, Teamwork and Inspirational Leadership represent the competencies of Relationship Management within the context of EI. Influence - and in particular, Influencing without Authority - are huge focus areas for Legal Project Managers to focus on while running projects. Influence can be best established through strong project execution and interpersonal interactions amongst the project team and stakeholders.

In real-time, LPMs are often not Lawyers and are not required or empowered to make Legal decisions for the project. However, there is frequently an expectation that Legal Project Managers surface any process or logistical risks for Legal review. The sum of these interactions equates to Teamwork within LPM, which another core factor of Relationship Management that is essential for LPMs and project teams to function well. Teamwork is best facilitated through having clear roles and responsibilities, centralized communication spaces, enforceable deadlines and appropriate forms of Leadership oversight.

In all, strong Legal Project Managers leverage Emotional Intelligence to better lead and empathize with project team, better navigate collaborative group dynamics and inform LPM judgment calls within Legal project work.

Sources:
Goelman, D. and Boyatzis, A. (2017). Emotional Intelligence Has 12 Elements. Which Do You Need to Work On? Harvard Business Review. Retrieved from URL: https://hbr.org/2017/02/emotional-intelligence-has-12-elements-which-do-you-need-to-work-on

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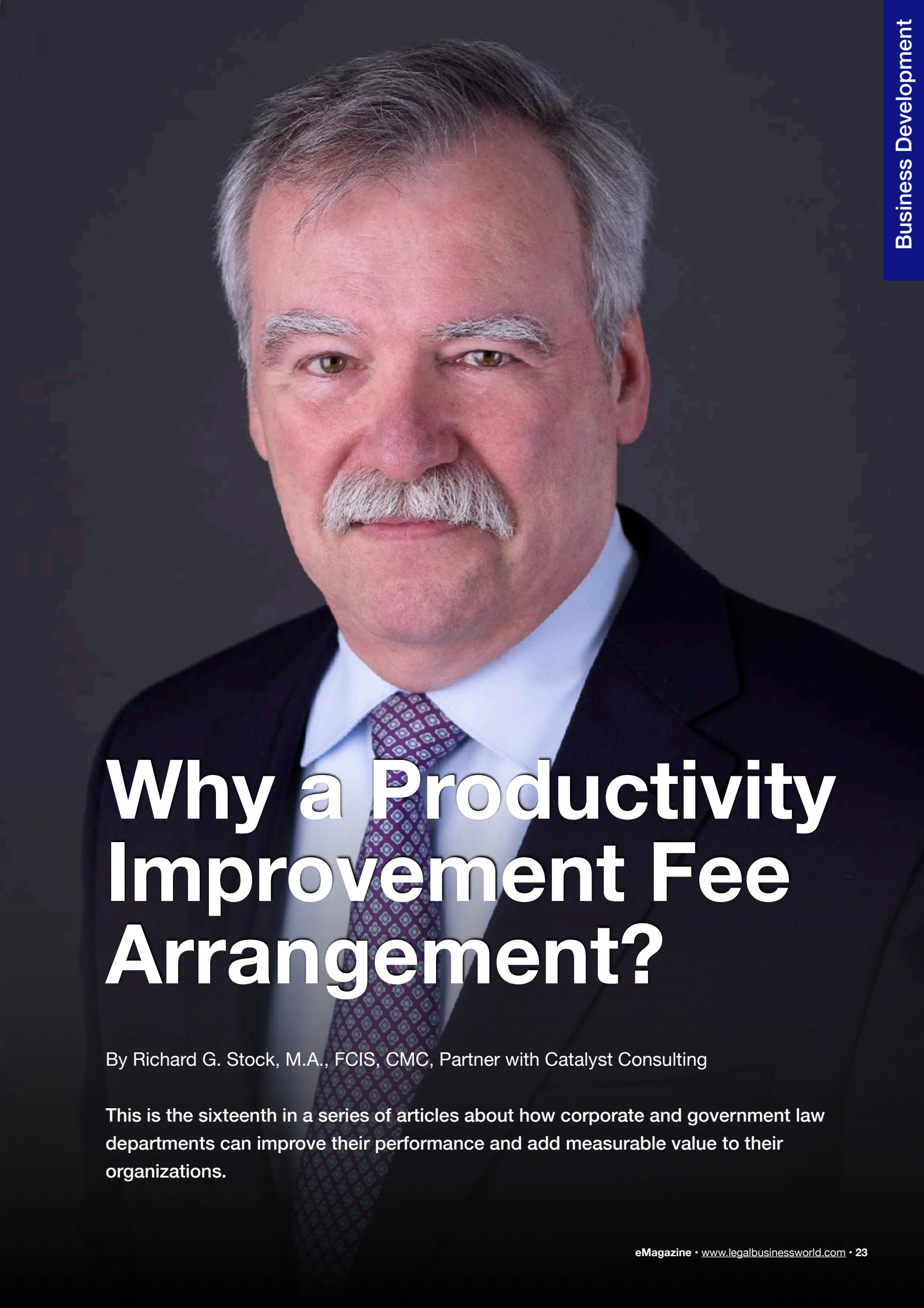
About the Author
Ayana Edwards Jackson is an experienced legal professional and writer currently working and living in Silicon Valley. She has worked as a corporate governance specialist and project manager directly supporting the Board of Directors. She obtained her B.A. in Anthropology from George Mason University. Ayana is also a writer and mixed media artist.



Why a Productivity Improvement Fee Arrangement?

By Richard G. Stock, M.A., FCIS, CMC, Partner with Catalyst Consulting

This is the sixteenth in a series of articles about how corporate and government law departments can improve their performance and add measurable value to their organizations.

Law firms always respond positively when asked about their experience with and their appetite for Alternative Fee Arrangements (AFAs). Some are enthusiastic for broad application, while most firms prefer to apply AFAs to individual matters only. General Counsel must insist on AFAs because law firms will never volunteer.

One simulation based on a recent law firm proposal was designed to support AFA discussions within the law department. It began with this statement from the General Counsel to the company's preferred law firms.

> *"Our company's experience is that working to find the best and fairest fee structure for each engagement aligns our goals and those of our panel firms, promoting greater efficiency in the delivery of legal services and making success a shared experience. We recognize that successful and sustainable AFAs require trust.*
>
> *We expect a sensible profit to be made by our panel firms under AFAs, but with the value being measured in ways other than the number of billable hours recorded.*
>
> *Our company is seeking a specific commitment from firms to work with us to replace, so far as practical, traditional time-based billing with AFAs that provide greater cost-certainty and incentivize the firm's success in delivering high quality advice efficiently. Examples of the firm's previous experience in delivering successful value-added initiatives to clients will be well received.*
>
> *However, unless a compelling pricing proposal is retained, we will default to variations of hourly-based billings in combination with detailed matter budgeting."*

Planning Assumptions for an AFA

The company identified 4 700 hours per year in its Invitation for Strategic Partnering (ISP). The hours were spread across eight categories of law and represented a total of 14 100 hours across three (3) years.

The company was able to assemble good historical data for 2018 and 2019 regarding fees and hours for each category of law and staffing patterns by experience level of lawyer. From there, it was easy enough to calculate representative hourly rates for most categories and use these as a baseline for AFAs and projected legal spend.

The ISP specified staffing ratios of partners, associates and paralegals for each category of law in order to compare blended rates across its panel firms for a 30-year reference period. In this example one firm, not the lowest priced firm, was judged to have the competence and coverage to be provisionally allocated 10 500 hours across three years - 3 500 hours or the equivalent of two lawyers per year- in the following configuration

- 1 000 hours per year of construction/major projects
- 1 000 hours per year of employment law
- 1 000 hours per year of litigation
- 500 hours (half of the annual volume) per year of M&A

Three Pricing Questions

1. What would the 10 500 hours cost if purchased in the traditional (pre-ISP) fashion over the next 3 years?

This calculation requires an escalation the 2019 baseline rate for each category by 4% per year. Thus,

- Construction at € 659 per hour in 2019 averages € 713.14 over the next 3 years and the 3 000 hours would cost € 2 139 415
- Employment at € 404.82 per hour in 2019 averages € 438.08 over the next 3 years and the 3 000 hours would cost € 1 314 227
- Litigation at € 489.06 per hour in 2019 averages € 529.23 over the next 3 years and the 3 000 hours would cost € 1 587 705
- M&A at € 637.97 per hour in 2019 averages € 690.38 over the next 3 years and the 1 500 hours would cost € 1 035 574

The total cost of the *"Traditional Option"* is € 6 076 921 (€ 578.75 per hour)

2. What would the same 10 500 hours cost using the ISP blended rate option?

- Construction at € 460.00 for 3 000 hours = € 1 380 000
- Employment at € 437.83 for 3 000 hours = € 1 313 490
- Litigation at € 441.92 for 3 000 hours = € 1 325 760
- M&A at € 467.35 for 1 500 hours = € 701 025

The total cost of the *"blended rate option"* is € 4 720 275 (€ 449.55 per hour).

What could the same 10 500 hours cost with a fixed fee combined with 10 % collar for 3 years?

One can call this the Productivity Improvement AFA. In this case, a fixed fee with a 10 % collar is designed as a shared risk / shared reward AFA which stimulates the firm to be more productive (fewer hours to reach the same objective on a legal matter) and to delegate certain tasks appropriately. It is also administratively simpler for the company to manage 36 equal monthly payments supported by regular activity reports.

Such a fee arrangement is best agreed with a *strategic partner* law firm, hence the use of an ISP (Invitation for Strategic Partnering) and not an RFP, whereby both the company and the firm make investments in innovation for service delivery, work intake and allocation, legal project budgets, knowledge transfer programs, legal technology, and management reporting.

The devil is in the details when it comes to the mechanics of such a Productivity Improvement AFA. Instead of 10 500 hours purchased one hour at a time for the three (3) years, the baseline hours anchoring the agreement are set at 9 450 hours (90%) in the belief that a good law firm can be 10% more productive with the right incentives in place. The fixed fee is based on € 449.55 and costs € 4 248 247. Payment would be in 36 equal amounts.

All hours below 8 505 (90% of the baseline) or in excess of 10 500 (110% of the baseline) would be reimbursed to the company or paid by the company, respectively, at the agreed rate of € 449.55. Activity reviews would be semi-annual to discuss volume trends and

complexity mix. The total cost of the *"Productivity Improvement AFA"* for 10 500 hours is the same as the cost of the 9 450 hours at € 4 228 247 (€ 404.59 per hour).

Observations

The blended rate option is €1 356 646 (22.4%) less expensive than the 2019 traditional price escalated annually over the next 3 years. The fixed fee "*productivity improvement*" option is €1 828 674 (30.1%) less expensive than the 2019 traditional option escalated annually.

About the Author

Richard G. Stock, M.A., FCIS, CMC is a senior partner with Catalyst Consulting. The firm has advised more than 150 corporate and government law departments across North America and abroad over the last 25 years. For legal department management advice and RFPs that work, Richard can be contacted at (416) 367-4447 or at rstock@catalystlegal.com. See www.catalystlegal.com

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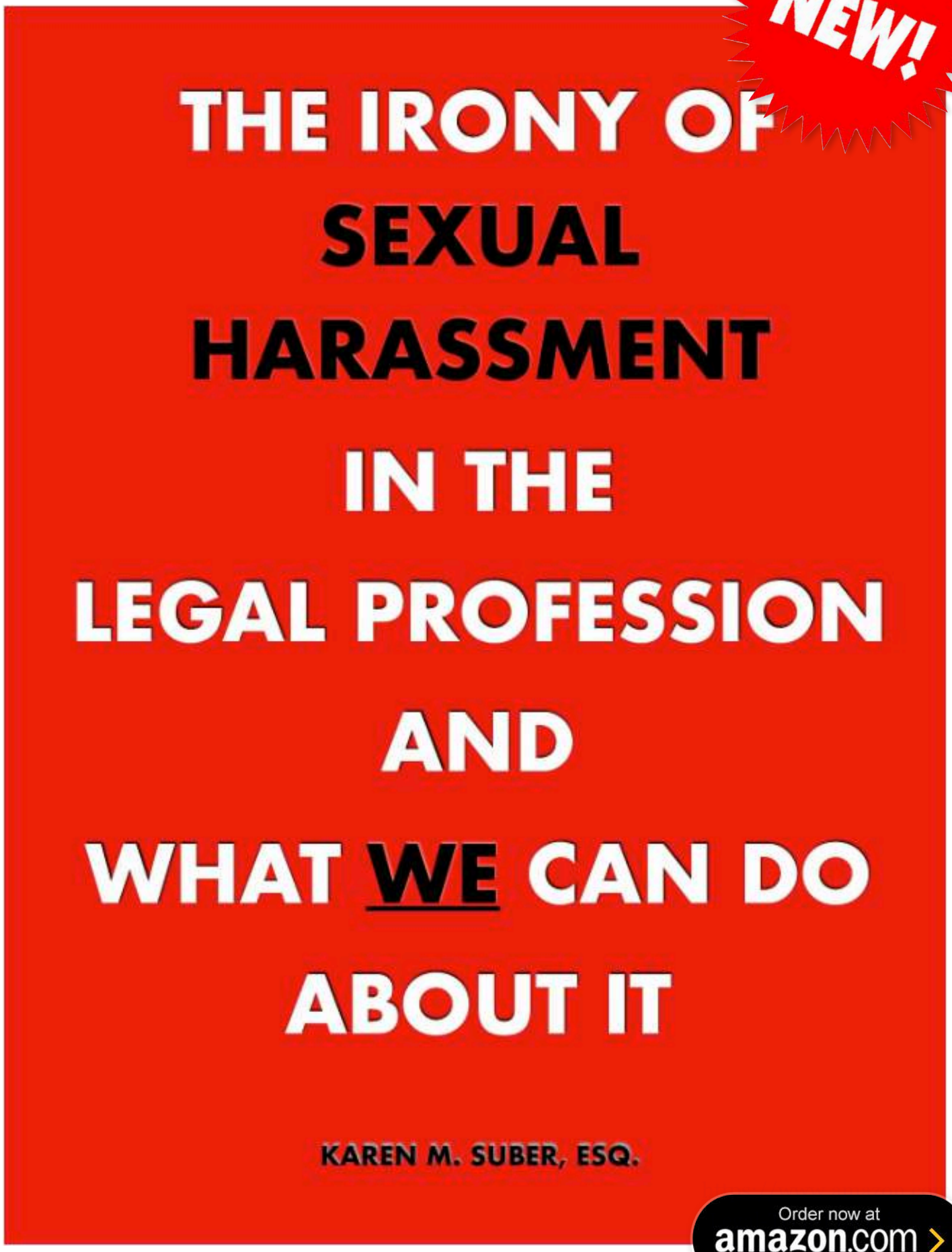
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TECHNOBREW

A Series about Emerging Technologies & Global Systems

Playing in the Sandbox Makes Technologists and Regulators Friends

By Aileen Schultz, Senior Manager, Labs Programs at Thomson Reuters; Founder & President, World Legal Summit.; Fmr. Co Founder & Global Organizer, Global Legal Hackathon.

There are those that suggest that we're moving into the age of implementation with artificial intelligence, and other emerged technologies. This notion of implementation has been extrapolated from standard processes of technology development and applied to the global context of emerging technologies and their current state of maturity. Every innovative new idea goes through a period of research and discovery whereby assumptions are validated, use cases are defined, and prospective challenges are better understood. We then move into a stage of development where issues are ironed out and the solution is brought to reality. Finally, we move into the implementation or user adoption phase, where these developed technologies are put into real world use.

It can be said that many emerging technologies from genetic modification and artificial intelligence to autonomous vehicles and decentralized technologies, are globally moving into a stage of implementation. We see this most transparently as regulators demand better definitions and compliances where the laws do exist and are making moves to create the laws where they don't yet exist. We can't have real world adoption if we don't have the regulatory frameworks to manage it – Microsoft's experiment with the Twitter chat bot Tay is a fantastic case in point of what happens when new systems are introduced into a real world, non-laboratory, environment. The chat bot learned from the world of social media dialogue and became a personality that was an aggregate of this data. Within 24hrs Tay was a racist, homophobic, sexist, human hating, algorithmicized blunder.

While we might generally prescribe to the notion that "sticks and stones may break my bones, but words can never hurt me", the extrapolation of these words into actions and the implications of careless implementation begins to paint a very telling portrait of our possible future. What's the flip side? Technological evolution is also imperative to our continued progress across all domains – with the fact that machine learned models are already outperforming humans in the diagnosis of cancer as a great case in point.

So, How to Reconcile?

According to the UNSGSA, the first regulatory sandbox was launched in the UK in 2015, and at the beginning of 2018 there were at least 20 jurisdictions using this model. The concept of a regulatory sandbox is another borrowed from technology, whereby a 'sandbox' environment refers to an isolated environment where computer code can be tested against possible real-world scenarios. In this way, we can discover possible pitfalls or ways in which the program is not functioning as intended, without creating any actual problems. This has been said time and time again, but worth reiteration here – the law and its application, just is code: a set of rules. In this vein, the sandbox environment applied to testing regulatory frameworks is the testing of the rules set out in that body of regulation to see just how practical they really are.

These are confined, sometimes time bound, testing environments for innovation with regulatory oversight. The purpose is to determine the viability of technologies, put them into practice in a controlled environment, and to see how their implementation interacts with regulation and real-world scenarios. The outcomes of these experiments could be accepted implementation, changes in regulation or the technology, or a hold on implementation until the right rules and guidelines can be established or compliancy with existing laws is satisfied.

Regulatory Sandboxes Proving to be a Great Solution

Crypto and Financial Accessibility:
The most explored use case for these sandbox environments is with governments granting blockchain and related companies access to a controlled regulatory environment in which models for cryptocurrency use can be explored.

In 2018 alone, the Financial Conduct Authority (FCA) and the Consumer Financial Protection Bureau (CFPB) began working with crypto companies in regulatory sandboxes to promote adoption in the UK and USA respectively. Now in 2019 and moving into 2020, multiple jurisdictions have issued their own cryptocurrencies and models are being explored for global universal currencies; for example, Facebook's Libra coin, a universal coin operated by a consortia of companies and organizations – evidently, further exploration of sound regulatory frameworks is *greatly needed*.

The success of these models are opening up vast possibilities for financial inclusion, such as methods for the unbanked to have economic participation, micro financing, methods for alternative credit scoring, and increased competition leading to fair market pricing on access to these technologies.

Autonomous Vehicles:
Autonomous Vehicles (AVs) are one of the most tangible use cases for regulatory sandbox testing and the model's benefits. Many countries have AV testing sites, where we will see massive pieces of land dedicated to testing these vehicles in laboratory like environments. These sites are just like mini cities, with scenarios created that mimic real-world environments, with traffic regulations, other vehicles, even pedestrians, that interact with these AVs to support the understanding of their use on actual city roads. Many jurisdictions now have these vehicles on their roads and driving alongside human driven vehicles.

KPMG released an Autonomous Vehicle Readiness Index for 2019 that ranked governments on their preparedness for having these vehicles on their roads and functioning in a sound regulatory environment. Singapore ranked second, next to the Netherlands in first place and the USA in third. When we look at how these governments are preparing for AVs, the use of regulatory sandboxes is a prominent, if not the main, factor in their high rankings. Singapore in particular has implemented a sandbox intended to be active for five years, and is key to building their already world renowned control-oriented strategy for AV adoption.

These examples illustrate quite vividly how we might reconcile the incentive to speed up innovation with the stark need of ensuring we're ready for it. Regulatory sandboxes are a solid example of the ways in which we can bridge this gap between law and technology, and we can expect a year 2020 and beyond that brings us a continued, and very needed, propagation of these models.

About the Author:
Aileen Schultz is a Toronto based award winning growth and innovation strategist with a global footprint, and a passion for creating better exponential systems. She works with SME's across several sectors with a focus in legal and blockchain technology.

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SEO

Photo by Marta Branco

5 SEO Stats that Law Firms Need to Know

By Jared Kimball, Owner and lead strategist at Zahavian Legal Marketing

At Zahavian Legal Marketing, we recently audited over 200 law firm websites ranking on the first page of Google for some of the most competitive search engine (Google and Bing) keywords, such as “divorce lawyer chicago” and “personal injury lawyer houston”.

We compiled a report measuring the trends among those websites that propelled their rankings to the first page of the search results.

In this article, we’re going to look at 5 of the most compelling statistics we found and discuss what it could mean for your legal practice.

1. Backlinks & Referring Domains

For those unaware, backlinks refer to hyperlinks on a webpage that points from a third-party website to your own. A referring domain is a unique website that links to yours.

For instance, your law firm’s website could receive 10 backlinks (i.e. hyperlinks) from Yelp. However, since all 10 are coming from the same website, yelp.com in this example, this would count as 1 referring domain with 10 backlinks.

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It's debatable which is more important – backlinks or referring domains, although as a general metric we look at referring domains more than the quantity of links. Backlinks and referring domains are important for building your website's trust and authority. Every link you receive from another website is like a vote of confidence in the eyes of search engine algorithms. It's analogous to the internet being a giant democracy, where websites vote for other websites.

In the study we conducted, we found that the average number of referring domains that a law firm's website needed to rank on the first page of Google for their target keyword was 256 referring domains. It's important to keep in mind that medium and large law firms had folds more links and domains pointing to their site than boutique and smaller firms. Therefore, this really skewed the findings, as larger firms pulled the average up significantly.

When we looked at boutique and smaller firms exclusively, we found the following results:

- **Personal injury** law firm sites averaged 264 referring domains
- **Family/divorce** websites had a mean of 120 referring domains
- **Criminal defense** and **DUI** practices, on average, had 150 domains points back to them

In terms of competitiveness and what a law firm may end up paying based on your area of law, typically the more referring domains and backlinks required, the more expensive SEO services become. Personal injury attorney sites had 2.2 times the number of links as family law and 1.76 times more than criminal and DUI websites.

2. Law Firms that Specialize Dominate Google

Backlinks are an essential component to a competitive SEO strategy, especially for legal services sector. However, they aren't everything. Boutique law firms that specialize or focus on a single area of law (or at least market themselves that way) substantially outranked general practice or full-service law firms:

• Over 91% of practices ranking on page 1 for "personal injury lawyer"+"city_name" (e.g. "personal injury lawyer Miami") were boutique injury law offices

• 94% of firms ranking for "criminal lawyer" in the top 10 focused solely on criminal defense/ DUI

• Just under 87% of law firm sites ranking for "family lawyer" were strictly family law practices

Boutique firms don't necessarily mean that a law firm provides better legal services because they are specialized. However, that's not how search engines like Google see it. With their new focus on E-A-T (expertise, authoritativeness and trustworthiness), the search algorithm is favoring businesses that emphasize more narrow or specialized areas of service. These algorithms' changes apply to nearly everything indexed on search engines, but it's interesting to see how lawyers can take advantage of this if they're a boutique or specialty practice. (Fig. 1)

3. Focus on Optimizing your Home Page

As an SEO and legal marketer, this stat doesn't come as a surprise to me, but it's reassuring to see supporting evidence. We found that nearly 88% of firms ranking in the top 10 positions were ranking their home pages. There are

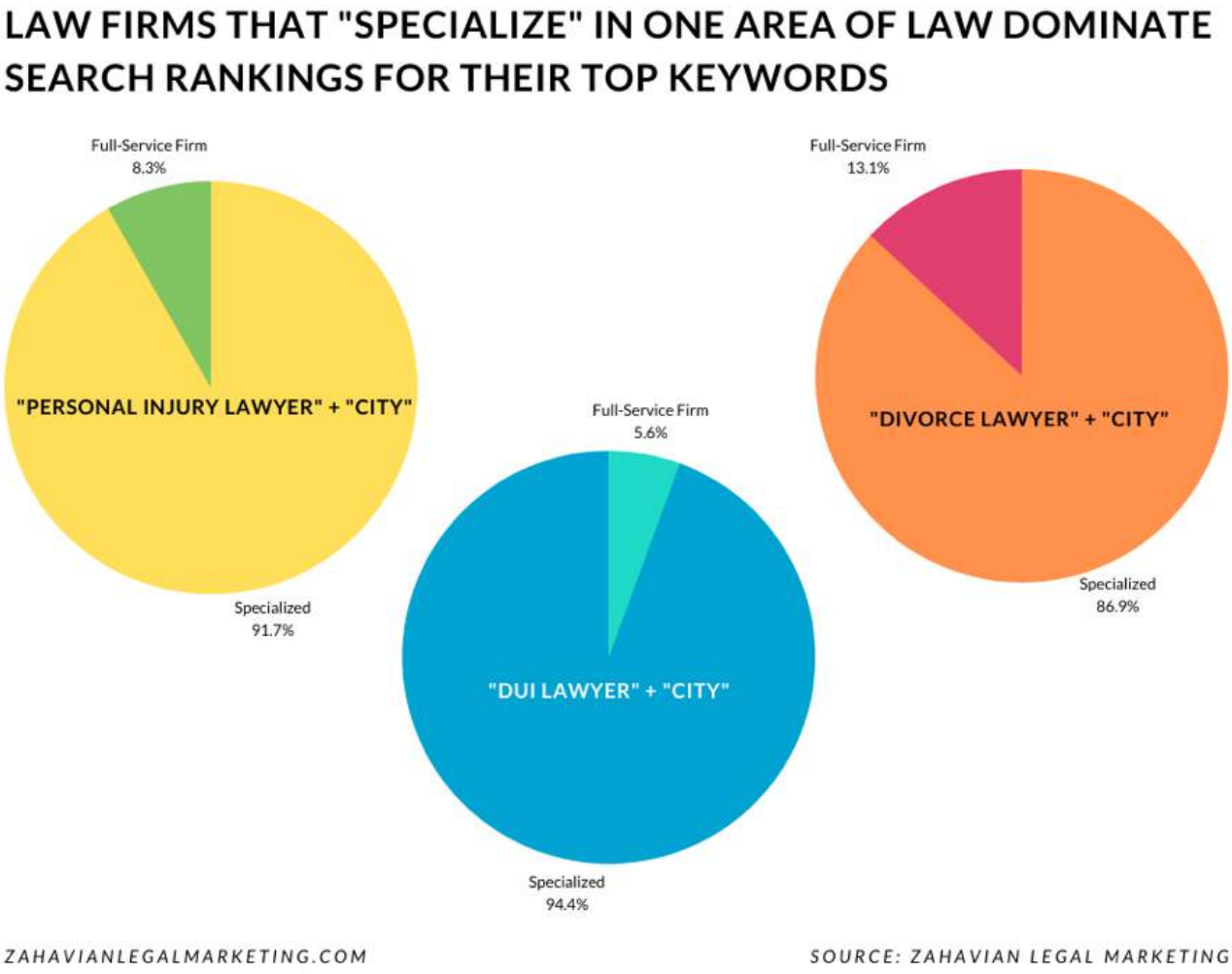


Fig.1

several principal reasons to keep in mind for why this may be.

a) SEO strength of the Home page - Every website tends to have one or a handful of central or main pages for the rest of the website. The most common is typically the homepage. Typically, the homepage attracts the most backlinks and referring domains and therefore tends to have the highest ability to rank due to its page authority from the links it receives. When a directory listing or third-party website links to your firm's, odds are pretty good it will link to the (Fig.1) home page (unless it's linking to or citing a specific piece of content / inner page).

b) Most law firm sites ranking in the top are specialized - Boutique law firms that market themselves as specialized in a particular area of law will have their home page's SEO optimized for that specialization.

For instance, a family law firm doesn't need to have a specific page on family law, rather they'll have inner pages about specific services they offer within family law, such as divorce, child custody and support, etc. This means

their home page is likely already optimized general keywords for “family lawyer” and even more specific keywords like “custody lawyer”.

When you combine these two factors together, it’s no wonder that specialty firms are doing so well. Their homepages are already better-positioned to rank than a full-service law firm with an inner service page (e.g. www.examplelaw.com/family-law/).

A key takeaway for general and full-service practices here is if you want to optimize and rank a specific page on your website (which isn’t the homepage), like “Family Law and Divorce Services”, then you need to make it thorough, informative and engaging for your visitors and prospective clients. Additionally, it must attract links and referring domains. Remember, only 12% of first-page rankings are not a law firm website’s home page.

4. 6 out of 10 Lawyers on Page 1 use WordPress

Regardless if you have multiple attorneys or you’re a solo practitioner, you should consider using WordPress to build your practice’s website. For those unfamiliar with it, Word- Press is a content management system (CMS) which is a fancy term for a backend portal and website editor. A variety of sources claim that between 20% to 30% of websites online are running WordPress. When it comes to lawyers that are serious about search optimization, that number is much higher. Over 60% of law firms ranking on page 1 of Google are using WordPress for their website. Another part of our study dug into the importance of page speed, as many marketers and SEOs (myself included) would tell you how important this is. What we found was surprising to say the least. On average, top-performing law firm sites using WordPress scored about half as well as non-WordPress websites when it came to website speed performance tests (approximately 33% vs. 63%, respectively) for mobile devices and smartphones. This leads us to the hypothesis that when push comes to shove, the SEO and functional benefits of using WordPress greatly outweigh the slower load times it may have on your website. This isn’t to say that your site’s speed isn’t important, however the data says Word-Press trumps speed.

5. Blogging Makes all the Difference

The number one differentiator between law firms that had some traffic and the ones that received massive amounts of traffic, was blogging. Sites that didn’t have a blog received an average of 182 organic search visits compared to over 3,000 search visitors per month for law firms that actively blogged on their websites. The key we found was that law firms that continued blogging and updating their older content dramatically outperformed law firms that blogged year ago or more, but aren’t actively updating or adding new content.

Law firms that had blogs, but didn’t update them still saw nearly 3 times more organic visitors per month than practices without a blog at all, but law firms actively blogging received over 15 times more traffic than firms that didn’t publish blogs or new content. When performed correctly, this one web marketing activity can be a game changer for pulling massive amounts of new website traffic. (Fig.2)

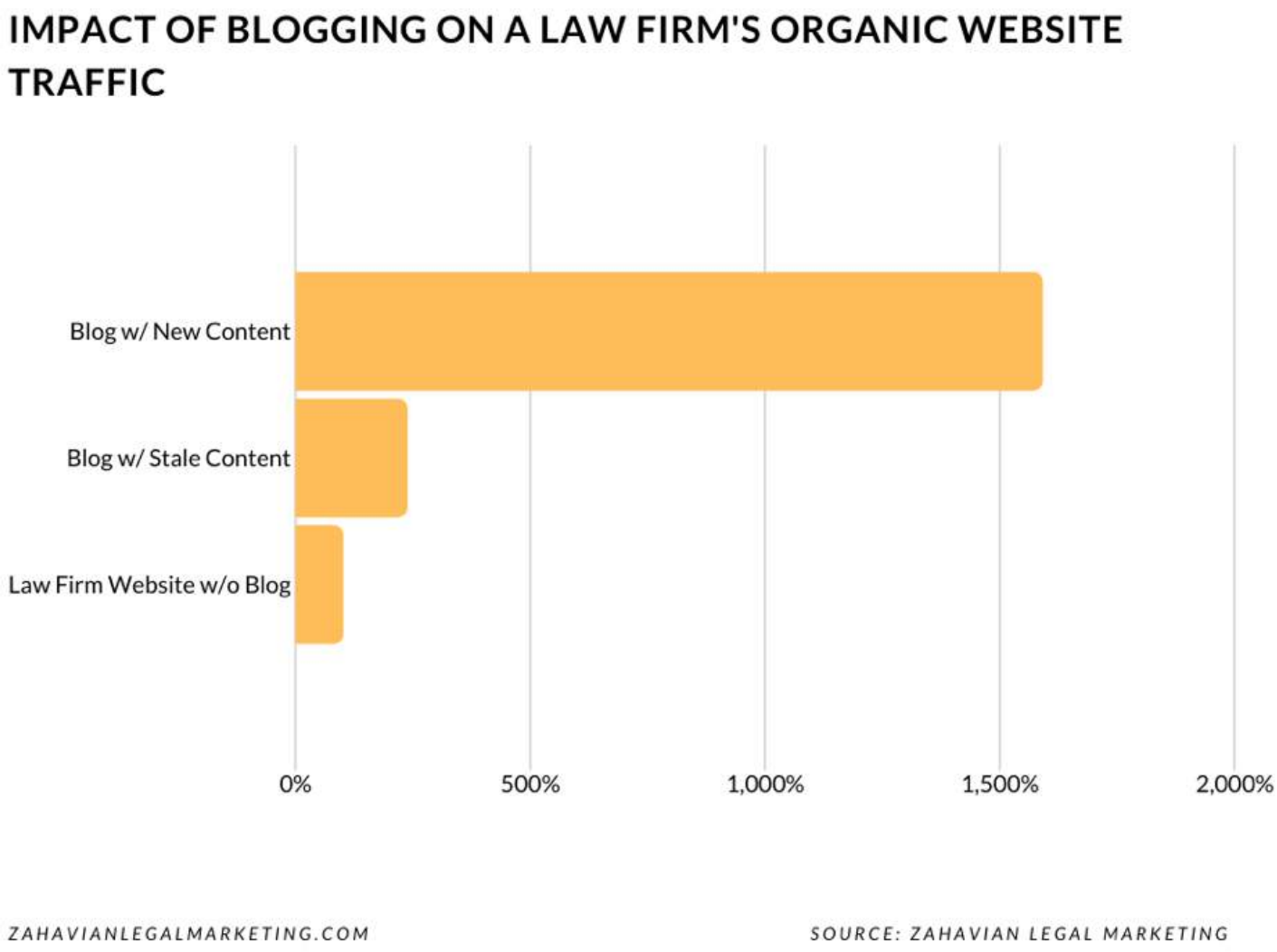


Fig.2

Conclusion

Search traffic is an extremely valuable commodity for many areas of law. There are a lot of law firms that pay big bucks to optimize every inch of their website for organic search as well as conversion rate optimization. While SEO is a full-time job (as it is for me), the 5 statistics discussed above will give you some key insights when it comes time for you to consider search engine optimization and internet marketing strategies that will grow your practice.

About the Author

Jared Kimball is the owner and lead strategist at Zahavian Legal Marketing, a marketing agency focusing on lawyers and law firms. The agency handles everything from SEO, Web and PPC Ad needs to blogging solutions and support for law firm's local advertising and marketing campaigns. As a long time marketer, IT consultant and programmer, he also supports law firms in their decision making for operational business functions including IT and security. He can be reached at jared@zhvn.org

Convenience is King

By James Côté, Legal Technology and Innovation Specialist, Bennett Jones SLP

Introduction

I recently saw an exciting legal tech product that has a lot of potential. I think it could make many people's lives much easier. And a partner wants to mandate its usage! You can probably see where this is going. It was a struggle the moment we tried to get others on board: elements didn't line up with others' preferences; people were upset about the learning curve; there was massive passive resistance. This was just one of many similar experiences. It seems technology and persuasion are not sufficient – and barely necessary – to create sustainable mainstream adoption of a new tool. As much as I might feel someone else is "not getting it," it is the legal innovator, like me, who is failing to relate to the wants and of that individual. Rather than try to persuade other lawyers and staff, it is more important to understand and accommodate.

We all see things differently. But what I often miss is how we aren't even looking at the same things. Where I might look for the potential competitive advantage of a product, another might never see past the lack of support available for it. Complaining that others can't see it the way I do just reveals the total wrongness of something I tend to be automatically sure of:

everything in my own immediate experience supports my deep belief that I am the absolute centre of the universe. Of course, this is neither true nor helpful. Without attempting to understand my clients' criteria, I'm just talking past them.

On the one hand, understanding and accommodating are crucial. As Seth Godin suggests, the number one adoption technique is to tell your client "You were right all along: The thing you were waiting for is here". On the other hand, if I'm not helping my organization prepare itself for the changing trends then I'm not doing my job. And that involves moving beyond where the mainstream users would be comfortable. Squaring "you were right all along" with "we need to change" is not easy. Below is my current thinking on how to do so.

My own interests don't really matter

Being responsible for innovation is exciting. You are looking for breakthrough opportunities that would leave your competitors behind. To stay ahead, you accept a certain amount of glitches because you must act fast: the window of opportunity is closing! The future is now!

Of course, not everybody feels that way.

Thankfully, the Diffusion of Innovations is a well understood phenomenon (see graph below). The diffusion of any new way of doing things (from corn farmers to Facebook) must win over distinct types of users in the same order. Unsurprisingly, these different users decide on when to buy something based on very different criteria:

- Innovators are interested in functionality: can this do *x*? (something that has never been done before)
- Early Adopters are interested in reliability: can this do *x* reliably enough that it can be a source of competitive advantage? (or, in the Facebook example, a new source of social capital)
- The Early Majority are interested in convenience: will *x* make my life easier?
- The Late Majority are interested in price: is the cost of not using *x* higher than the cost of using it? [Note: "cost" is also subjectively-defined (money, time, peer or boss approval, etc.)]

You can visualize it like this:

Understanding the different buying criteria alone has both helped and complicated my understanding of how to pitch something. For example, a senior lawyer won't use with a tool the same way as an assistant, but that only accounts for one part of the equation. In addition to catering to one's role, I need to cater to one's adopter profile. So instead of, say, four different roles in your firm (assistant, partner, etc.) there are now four roles multiplied by probably three of the adopter types. [1]

To illustrate how different these adopter types can be, consider the chart below, drawn from the brilliant Crossing the Chasm:

Early Adopter	Early Majority
Looks out at the competitive landscape	Looks within the organization
Better = something that changes how the company conducts its business	Better = something that marginally improves something, but keeps the existing operations
Decides by comparing the different ways something could be done, across categories	Decides by evaluating similar products against others that fall within a common category
Interested in "state-of-the-art"	Interested in "industry standard"

The two aren't even looking at the same things. No matter how interesting I find a new state of the art tool, I will not be able to sell it to someone further along the adoption stages unless I can say it is "industry standard" in some way. Furthermore, the universal nature of this chart suggests that constantly looking to see what others are doing before jumping on board is not unique to lawyers. It is inherent to being a mainstream customer.

One adjustment I've found to be effective in my own adoption efforts is talking about how safe a tool is, or how easy someone can fix a mistake on it. While I don't find the ability to "undo" something particularly exciting, I have to remind myself that it's not about what I find interesting. For most lawyers, "efficiency" is an insufficient reason to change the way they do things. I will never change that fact. Instead, I have to find tools that appeal to others through their personal criteria.

Fortunately, we are all Early and Late Adopters in certain areas. Trailblazing can be exhausting. It would require too much time and energy to be this way with everything. We all have certain categories (e.g. nutrition, home entertainment systems, vacation locales) where industry standards are sufficient. We can channel our inner pragmatism and conservatism to redefine "better" in terms that a given audience will relate to.

Most Adoption is not about the tech

The Early Adopters are often called "visionaries" because they can take a generic tech product and envision the potential. Take electric cars: the early adopters were willing to look past the inconveniences of no charging stations and low range. Most people just want to get from A to B in the most convenient way possible. As discussed above, it is not a coincidence that convenience was the barrier to mainstream adoption. The majority just want things to work.

The gap between the generic tech product (e.g. a reliable electric car) and a product that is genuinely convenient (e.g. an electric car that provides a better all-around experience than a gas car) is where many products fail. The challenge of making a product truly more convenient is often so difficult that it is where many companies fail – thus earning "the chasm" its ominous name.

Function and reliability don't require the same level of customer understanding as convenience.

To make something more convenient, not only must you understand what that word means to a specific customer, but account for "convenience" meaning different things to different people. The gap between a generic product for Early Adopters and a convenient product for the Early Majority is called the "whole product."(figure 1.)

If you accept that mainstream users won't put up with a less convenient product, and that providing such a product requires more than merely generic technology, then our diffusion curve now looks like figure 2.

Having a great underlying technology is neither sufficient nor necessary to break into the mainstream. Having to learn a host of new skills or to rearrange one's workflow is not convenient, which is why the above arrows cross paths at the chasm – when convenience becomes the main reason to buy. The need for convenience is so important that David Cambria, the godfather of legal operations, has refused to implement products where lawyers would have to engage "in a single unnatural act."

Figure 1

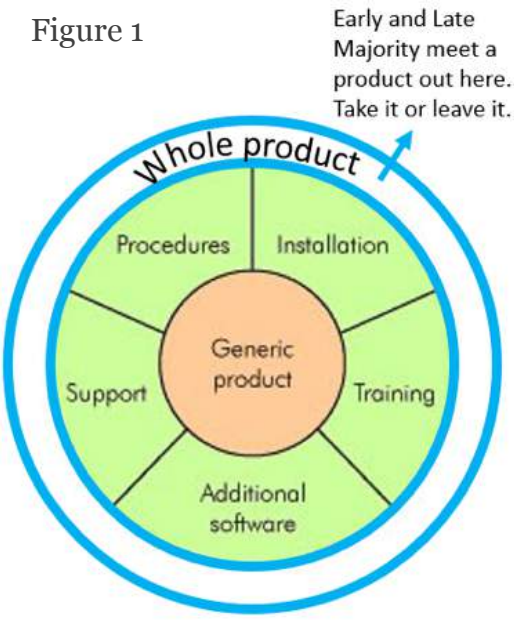
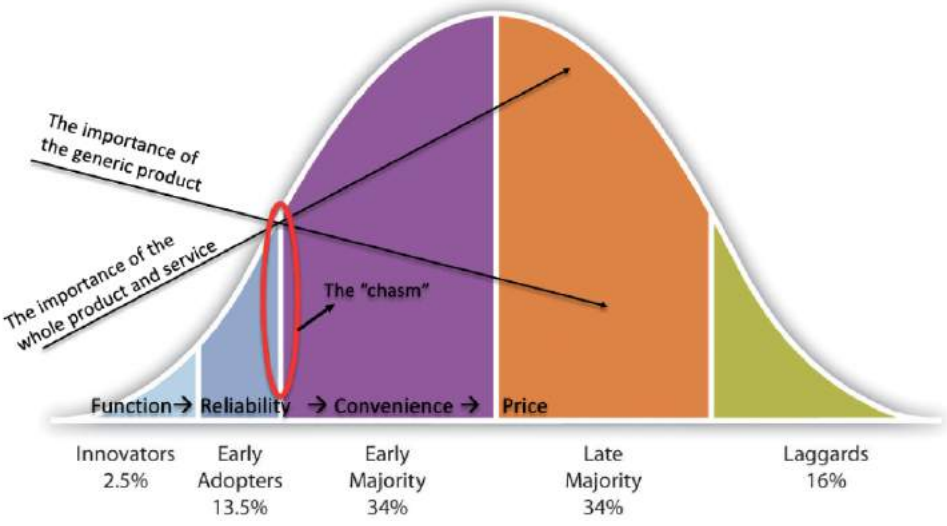


Figure 2



A quick word on mandating usage

I used to think "this would be so much better if we just *required* everybody to use this tool." I was wrong. For starters, I'm generally not the one using these tools day-in, day-out; so lobbying that others do so would be a tad presumptuous. Secondly, it would mean that I forego understanding my audience. Innovators and Early Adopters make up only 15% of my target audience. And it should be no surprise that failure to understand 85% of the target audience usually portends a slow but certain death for any new process, product or service.

Mandating usage without taking the time to understand and accommodate can only go so far. As Bill Henderson explains, political capital is limited:

> In theory, management can fix this [adoption] problem by mandating usage. They can fire people. They can reduce or withhold bonuses. Political capital, however, is limited. Few bosses want the troops grumbling about how a six-figure software mistake is hindering their ability to do their jobs. So the natural equilibrium becomes enterprise software that is half used. This is usually a modest improvement over the prior state of affairs, but well short of expectations when the licensing agreement was signed.

A bleak, familiar picture indeed.

Conclusion: Pick your battles

At this point, I'm fairly convinced that the only way to win over others is to understand them enough to give them what they want (as Seth Godin puts it, "the thing you were waiting for is here"). Cambria's baseline of not implementing something that requires lawyers to perform "a single unnatural act" fits this thinking. However, how can I follow this route and still call myself an innovator?

Fortunately, Everett Rogers (who wrote the book on the Diffusion of Innovations) seems to agree. He centers the worthwhile efforts of change agents around building relationships with one's clients:

- Frequent contact with clients
- Try to solve a client's problems instead of advancing your own agenda
- See the world through the eyes of the client
- Act like the client would act
- Gain credibility in the clients' eyes
- Work through others
- Improving technical competence of clients

In going so far as advocate to solve client's problems *instead of* advancing your own agenda, I think what Rogers is getting at is that relationships must come first. Making deposits in others "relational bank accounts" means there you have some credit to "withdraw" when asking others to try something new and uncomfortable.

Even Google aims to spend 70% of its resources on core functions. Part of the logic behind this is that advancing something truly innovative is demanding. You need robust relationships and a strong track record (cf. The Hard Truth About Innovative Cultures). Plus, we are dealing with finite resources; limiting the disruptive projects to one or two gives them a better chance for success. As Moore puts it: "if you do not commit fully to [focusing

exclusively on... one or two narrowly bounded markets], the odds are overwhelmingly against you ever arriving in the mainstream market."

It may sound less exciting to limit how much you try to persuade others to try new technology. But if that's what Google, Cambria, and Rogers do, I think it's worth trying. The mainstream users comprise 70% of a total audience. Add on the laggards and you have 85%. It just makes some sense to spend the most time building relationships with these people by giving them what *they* want.

Note

[1] For a much more detailed look at differences between adopter types, click here.

About the Author

James Côté is a Legal Technology and Innovation Specialist at Bennett Jones LLP. He combines technology and innovation with business strategy to navigate the changing legal landscape. Before law, he worked as a journalist, entrepreneur, engineer, and farmer.

Views and opinions expressed in my articles are my own.

James Côté is a regular contributor of Legal Business World. Read more from him here

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An interview with

Sheila Mackay

Managing Director of eDiscovery, H5

By Editorial Department

About H5

H5 helps corporations and law firms find and manage the documents that matter in litigation and investigations by providing expert-driven, technological solutions to address the complex challenges created by electronic data. With expertise in eDiscovery, compliance services and technology, technology-assisted review and search, H5 is committed to helping clients find and manage the information they need to win cases, meet regulatory requirements and address risks by providing creative products and solutions that ensure fast, accurate, cost-effective results.

Why did H5 decide to conduct a survey about investigations?

H5 works with companies in the context of litigation, investigations and compliance in several ways.

H5 is often called upon to support or advise clients in various investigatory processes, especially those that are data-related. While we continually listen to and learn from our clients about the challenges they face, we wanted to hear more from a wider selection of professionals who spend their time on the front lines of investigations.

So, we partnered with Above the Law to conduct an online survey, asking respondents to share their experiences about a number of investigations-related topics. We got a very healthy response—more than 315 professionals directly involved in investigations in their companies participated, representing a variety of industry verticals both within and outside of the U.S.

Today's evolving business and social climate seems to be seeding the soil for potential problems in a number of areas (e.g., discrimination, harassment, cybersecurity, privacy, regulation) that could lead to an investigation. This would suggest that companies need to take a proactive stance in order to stay ahead of any suspicious activity that may be brewing, or be ready to respond quickly to a possible request for information. Based on the survey, are corporations being proactive? If so, how?

Getting ahead of any investigation is important in mitigating risk, and what we are seeing is that companies are becoming proactive in some ways while remaining reactive in others. An overwhelming number of survey respondents (63%) said they expect to see the number of investigations increase over the next three years, with workplace investigations topping the list.

How they respond to this perception remains to be seen, but there are a number of encouraging signs that corporations are looking to be proactive. For one thing, intensifying cultural and ethical pressures (think #metoo and social media concerns, for example) are driving companies to sharpen their compliance focus with enhanced company policies and employee training—that is a positive. Cybersecurity concerns and privacy mandates like GDPR and CCPA are having the same effect. This flurry of compliance activity is necessarily engaging wider groups of stakeholders and getting them to collaborate in efforts to examine internal practices and processes in ways they might not have done before.

Attention to proactive management of electronic data is also a crucial element in reducing risk. Sixty-seven percent of survey respondents said their companies now proactively monitor data to identify potential wrongdoing (e.g., via email review or network monitoring), notably higher in regulated industries. I think we can also assume that the accelerating development of technological analytics and AI tools will become more widely adopted for proactively addressing investigations, as well as enhancing the workflow itself once an investigation is in progress.

Investigations present significant risks for a company on a number of fronts – costs to pursue, damages and fines, business disruption, reputational damage. What are the survey takeaways related to these risks?

Investigations come in various shapes and sizes and depending upon the type of investigation and the company that faces them, the perceived risks and potential consequences differ. Costs—either to pursue or resolve an issue (damages and fines)—are generally a concern. But the survey found that reputational damage is of greater concern in many cases, especially for workplace and white collar investigations, where the headline-grabbing potential is high and can do the company serious harm. Reputational damage is also a major concern in regulatory and cybersecurity investigations, but it was outweighed by potential cost of damages or fines in the first instance, and potential disruption to the business in the second.

These are not really surprising findings given the frequency with which we see questionable corporate behavior make the front page, or worse, the news feeds of social media. In some ways, concern over reputational damage is more a reflection of a culture of exposure, which can have both positive and negative consequences. The bottom line is that investigations can be costly, risky, and are often disruptive no matter what, and anything a company can do to preempt them is a good use of resources.

A challenging problem for US and non-US corporations alike is addressing the ever-growing volume of electronic information that is within a company's purview. What insights does the survey provide about this digital challenge?

Dealing with the constant proliferation of data remains an ongoing challenge and concern. In litigation and investigations both, it can be one of the biggest (not to mention most expensive) concerns and can present the greatest risk, which is probably why topics related to protecting, preserving, collecting or finding the evidence within electronic data continue to appear on the agenda of legal and compliance conferences around the globe.

The survey reflects those concerns. Regulatory/governmental and workplace investigations were said to generate the most data for collection and review, and the volumes can be quite large; respondents reported that nearly 60% of their most frequent investigation type generates more than 100GB of data; 14% said more than 1TB. And, as I mentioned earlier, a healthy majority said their companies are proactively monitoring data. We are seeing the growing adoption of technological tools across the board, and not just in the U.S. In the UK, for example, the Serious Fraud Office (SFO), indicated that they have already used AI robots to check for privileged material in past cases and that machine learning and AI-based technology-assisted review features would soon be used in investigations to create greater efficiencies and shorten decision-making timelines.

Investigations can be costly and resource-draining. What were the respondents' views on the nature of the spend? What are the most costly aspects of an investigation?

There is no question that investigations can be expensive and time consuming. Nearly thirty percent of respondents put their companies' overall investigations spend last year at more

than $1M, with 17% saying over $6M. Interestingly, non-U.S. companies reported a higher spend: 21% reported spending $10M+ (vs 2% of U.S. companies)

The top three areas of spend for a typical investigation are costs for outside counsel (86%), analytics technology (59%) and, running neck and neck, costs for eDiscovery services and contract reviewers (52%+). Of course, costs can vary by investigation type as well, particularly where large data volumes are involved. As collected data grows, other costs —for processing, hosting, and review (particularly by outside counsel)—also grow.

An interesting indicator for the future is that for a typical investigation, analytics technology was named as the second largest area of spend after outside counsel, an indication of a move towards using more advanced tools to handle investigations.

The management of corporate investigations is important, of course, and the survey queried respondents about who manages investigations at their companies. Although the legal department racked up the largest response (44%), compliance departments (27%), the C-suite (21%) and the board (8%) also play significant roles. What can we infer about how investigations are handled from their responses to this question?

I think the responses here demonstrate the growing realization that a wider circle of corporate stakeholders must play a more proactive role in investigations. While legal will necessarily be on the front lines, it is the collaboration among in-house teams in developing and following through with appropriate compliance initiatives, technology and automated workflows that will ultimately move the needle.

What did you learn from the survey regarding how satisfied respondents are with their ability to identify key documents during investigations?

Finding key documents to understand the facts is a critical part of an investigation and it is a very different exercise than reviewing documents for production in a litigation. In an investigation, you are looking for facts that may not be known or well-developed, not documents that support a particular legal narrative. Too often, unfortunately, the same approach is used. Keyword search by in-house resources (31%) or a manual document review effort (28%) were cited most often in the survey, which, given the expenditure on analytics technology mentioned earlier, is a bit surprising. Only 17% noted use of analytics technology for finding key documents, with TAR/CAL and AI technology at 12% each.

Satisfaction levels with finding key documents were fairly mediocre, so we can infer that there is room for improvement here. About one-third of those surveyed report being somewhat or very dissatisfied with the efficiency and cost-effectiveness of their company's current approach, increasing to nearly half when it comes to the speed of finding key documents. Presumably, the ongoing evolution of advanced technologies will ultimately gain traction, leading to a wider

adoption of more sophisticated and targeted methods for finding the documents that tell the story.

About Sheila Mackay,
Sheila Mackay has more than 25 years of experience in the legal services industry including product development, professional services, operations, management and business development. An advocate of the use of technology to drive efficiency, Sheila works hand in hand with H5's client services, infrastructure and technical services teams to develop and deploy custom solutions for global and domestic companies and law firms.

Lexpo 2020 Speakers… and more to come!

Peter Wallqvist

Peter - co-Founder & CEO of AI company RAVN Systems (now part of iManage) - has spent his career in information technology. He joined BT Research as a graduate engineer in 2003, and from there he went on to deliver a number of high-profile IT projects in the US and Europe. Currently, Peter is working as an independent consultant, advising organisations on digital transformation strategies using technology and process improvements.

Jenny Radcliffe

Jenny "The People Hacker" Radcliffe is a force to be reckoned with. She is an expert in social engineering, negotiation, persuasion and influence, using her skills to help clients ranging from global corporations and law enforcement organizations to poker players, politicians and the security industry. Radcliffe speaks, consults and trains people in the skills of "people hacking" and explains how "social engineering" using psychological methods can be a huge threat to organisations of all sizes.

Gereon Abendroth

Gereon is a member of the Management Board of Osborne Clarke Germany and leads the firm's initiative on Legal Tech and Service Innovation. He also supervises the digitisation of Osborne Clarke's internal processes.
The range of solutions developed by Gereon and the team spans from document automation to digital legal project management but also includes self-service solutions for clients.

Vincent Cordo

Vincent is Central Legal Operations Officer of Shell's Legal Services Global Operations Department. He worked with several top 50 global law firms, building their AFA and LPM value programs, firm wide profitability programs, and Legal Process Outsourcing Services.
He is author of the book Law Firm Pricing: Strategies, Roles, and Responsibilities and a long-time member of the Corporate Legal Operations Consortium.

Jeroen Plink

Jeroen is the CEO of Clifford Chance Applied Solutions. He began his career in Clifford Chance's Amsterdam office as a private equity associate. In 2000, Jeroen left the firm to start his own legaltech company. He sold his business to Practical Law Company and subsequently set up PLC in the USA which was sold to Thomson Reuters in 2013. Before re-joining Clifford Chance Jeroen became involved in numerous legaltech startups.

Reena SenGupta

With over 20 years experience of business and the City, Reena is known as one of the leading analysts of the legal profession.

In 2005, Reena came up with the idea of ranking lawyers on innovation, which has become the FT Innovative Lawyers reports and awards. She is a long-time contributor to the Financial Times and helped to establish the paper's Law & Business page in 2001.

Series on Corporate Social Responsibility and Sustainability for Law Firms

Social Impact for a Law Firm: Beyond the basics

A profile of Vieira de Almeida, a Portuguese firm with social impact at its core

By Pamela Cone, Founder & CEO Amity Advisory

Law firms are beginning to exhibit a more comprehensive and holistic approach to how they view social impact and sustainability. When it comes to moving from "transactional" to "transformational," **Vieira de Almeida (VdA)**, a firm based in Lisbon, Portugal exemplifies a truly transformational approach and has since its inception.

This business approach sets VdA apart as a leading example of what a holistic, robust social impact and sustainability program could (and should) be in law firms today.

Moving corporate social responsibility from transactional to transformational

Most law firms engage in community investment and most have pro bono programs. At many firms, these programs are isolated departments that engage in separate transactions, each focusing on its own "random acts of kindness." It's rare to find a firm whose social impact and sustainability programs are truly "transformational."

When a firm's program is truly transformational, it clearly represents three attributes in all of its social impact/sustainability initiatives and projects:

- Core to the business – uses highest and best skills of its people
- Consistent with purpose – aligns with and part of the firm's strategic vision
- Collaborative in nature – works with external parties for greater impact

Vieira de Almeida – Lisbon, Portugal

VdA was founded in 1976. Founding partner Vasco Vieira de Almeida's mantra still resonates today. …." A true lawyer is above all a Citizen" The firm's work in support of that mantra is prolific and obvious. VdA is a leading Portuguese law firm with a team of 470 professionals, including more than 300 lawyers working in 19 practice areas. The firm has two offices in Portugal (in Lisbon and Oporto). It also works internationally in 12 jurisdictions through VdA Legal Partners, a network that connects lawyers and independent law firms associated with VdA to provide integrated legal services in both Portuguese and French–speaking Africa, as well as East Timor.

Being a leader – beyond expectations

VdA's corporate social responsibility program is developed around two dimensions: environmental sustainability and social responsibility. "While pro bono and social responsibility initiatives seem to be standard in Anglo-Saxon countries, that's not the case in Continental Europe," said Margarida Couto, one of the early members of the firm, and now the partner in charge of its CSR and sustainability program. "My ambition is to set the example to infect other firms with the sense of obligation to address the very challenging issues facing society today. After all, if we don't step up and lead, who will? This is our moment. To quote our founding partner: A true lawyer is above all a Citizen! We must work to build a more informed, integrated and inclusive society."

Core to the business—embedded in their client work

In an unprecedented move in Portugal, VdA created a practice group focused on the social economy in 2018, with the goal of creating a specialized and professional response to this sector's specific needs. VdA aims to serve as "agents of change" in the social economy by building capacity of third-sector entities, such as foundations, cooperatives, and nonprofits. Lawyers provide ongoing training that promotes access to information, shares knowledge, and improves legal literacy. This training not only empowers third-sector entities by helping them understand and fulfill their legal obligations, it also equips them with additional and improved tools and resources to more effectively and sustainably carry out their missions.

Collaborating with external parties

With great confidence in the vitality and soundness of its social impact and sustainability programs, VdA is a signing member of the United Nations Global Compact, thus committing to the UNGC's 10 Principles, and contributing to the achievement of the Sustainable Development Goals (SDGs) by 2030. VdA has contributed (in an integrated manner and in partnership with other entities) towards the implementation of the SDGs, including in its participation in the SDG Alliance, which currently operates as the Portuguese network's main initiative.

Pro bono—beyond occasional, random cases

True to its founding vision of "Citizens First, Lawyers Second," VdA encourages the exercise of citizenship within VdA and between VdA and its partners through its pro bono program.

Focusing its pro bono program on innovation and social entrepreneurship, the firm actively cooperates with several organizations in the social economy sector to build their capacity, such as:

- Centro Português de Fundações—a nonprofit that represents foundations
- Entrajuda—an association whose core activity is capacity building in the third sector
- IRIS—an incubator of social innovation projects
- GRACE—an association representing more than 170 corporations that share CRS as a core concern
- TrustLaw—a clearing house that connects high-impact NGOs with pro bono lawyers
- Impact Hub Lisbon—a member of the Global Network of Impact Makers

VdA provides pro bono legal services that strengthen and develop relevant social innovation and social enterprise projects, including:

- Speak—a project that promotes the integration of foreigners and refugees by sharing experiences
- Just a Change—a project that changes the lives of families living in a state of housing poverty through (re)construction interventions
- Teach for Portugal—a member of the Teach for All network, which helps children in disadvantaged communities fulfill their potential though an innovative approach
- ColorAdd—a social innovator that created a unique, universal, inclusive, and non-discriminative language that enables the color blind to identify colors

These projects help build a more informed, integrated, and inclusive society. At VdA, time spent in pro bono legal services is included in lawyers' annual performance goals, and pro bono hours are treated as billable hours.

Foundation—beyond charitable donations

In 2016, the firm established the Vasco Vieira de Almeida Foundation, which has reinforced and deepened its commitment to the community. The Foundation's mission is aligned with its "Citizens First, Lawyers Second" mantra—to promote human rights and the rule of law through citizenship education and the exchange of values and knowledge. The Foundation's work is promising and exciting, and it actively involves the entire firm. Like the firm's pro bono work, it aims to build a more informed, integrated, and inclusive society.

The Foundation focuses on collaborative networking by partnering with key national and international stakeholders in the social and environmental sectors. Two of the most powerful projects the Foundation supports are:

- SEMEAR: Terra de Oportunidades (Land of Opportunities)—an inclusive social business that improves the employability and socio-professional integration of people with disabilities through certified training and development of hands-on skills in organic agricultural production and processing.
- Girl MOVE Academy—an advanced program in leadership and social entrepreneurship, which helps Mozambican young women build leadership skills and acquire an entrepreneurial vision in troubleshooting.

(Photo: Patrícia Tauzene's Concert&Talk-Girl Mover who participated in an international Life Internship in VdA, in 2019, in the context of the partnership with Girl MOVE Academy)

Carbon footprint—beyond recycling

While most firms take steps to reduce their carbon footprint through reducing paper use, switching to recyclable products in its kitchens, LED lighting, and composting, very few firms are working to address the biggest contributor to their carbon footprint—air travel.

VdA focuses on all elements of its carbon footprint. It has been measuring and making progress since 2011, when it launched an initiative called VdA's Green Project. The goal of this sustainable development and eco-efficiency program is to minimize the environmental impact of the firm's operations, including its impact from business travel. Environmental concerns are integrated in the firm's business strategy, with a goal to eventually achieve carbon neutral status.

VdA publishes a carbon footprint report, which clearly shows their CO2 emissions and the progress they are making (or not) since 2011. The categories they assess include: energy, travel, water, paper, and waste. They look at their consumption on a per-employee basis and compare themselves to others via industry benchmarks. And they work with their supply chain to reduce their carbon footprint as well.

VdA is a member of Legal Sustainability Alliance (LSA), an international organization of law firms committed to promoting sustainability. It is also a member of BCSD Portugal, a business association that integrates the worldwide network of the World Business for Sustainable Development (WBCSD).

Living its principles

"We are very proud of our focus on being Citizens First, Lawyers *Second,* as that made us *true lawyers*. It has made our firm what we are today," said Couto. "However, there is much still to be done. Guiding ourselves with a vision of a more informed, integrated and inclusive society, we will do our utmost to ensure that VdA's CSR program is in constant renewal, always taking care that it successfully rises up to the societal challenges of the future. After all, if not us, then who? If not now, then when?"

About the Author

Pamela Cone has more than 25 years' experience in the professional services industry in marketing and communications roles, and more recently, building social responsibility programs in collaboration with clients and in alignment with the United Nations Sustainable Development Goals of 2030. She is the Founder and CEO of Amity Advisory, a consultancy to help firms strengthen their CSR programs beyond transactional to achieve truly transformational social impact outcomes.

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Protecting your Innovation the Israeli Factor

By Asaf Shalev, Adv., Patent Attorney

Israel – the land of milk, honey, innovation, and… Patents? Here are a few fun facts:

- Israeli economy conquered 5th place in Bloomberg's 2019 innovation index, passing countries such as Japan, Singapore, US, China, and others
- More than 550 multinational corporations have local activity in Israel
- Multinational corporations file about 90% of local patent applications in Israel, trying to secure their interest in the local R&D market

Innovation deriving from multinationals R&D centers located in Israel is at the heart of their next generation products, hence – international conglomerates are running an IP strategy in which Israel fills an important part at the beating heart of their core practice. But is this strategy **a game of chess, or calculated poker?**

Since its creation - May 14, 1948 - Israel is an innovative country. While at its early days, Israeli innovation revolved mainly around matters related to its survival, such as military and agricultural innovation - along the years it has matured into a technological powerhouse, with second to none Hi-Tech innovation.
VC investment USD per capita in Israel is 674$ (2018), the highest in the world. Data shows that 4.3% of Israel's GDP is spent on R&D, once again - the highest in the world. There are more than 6,500 start-ups operating in Israel, and the country is ranked 3rd at the number of NASDAQ listed companies, after US and China only.

This unique status was not overlooked by multinational corporations, and over time, more and more of them generate presence in the Israeli market. This presence can be in the form of partnerships with local startups or academia, but many multinationals choose to establish local R&D centers in Israel.
Some simply bought Israeli start-ups with technology that fitted their needs, while others started an operation in Israel from scratch. In either case, they were hiring the brightest local talents to develop technologies for their next-gen products (a phenomena which is criticized by many local employers that now have to compete with those corporations, which have much deeper pockets, for high quality personnel).

Apparently, their strategy paid off. Local Israeli innovation developed at the local R&D centers is at the heart of some of the best-selling products around the world. *Intel's* processors are developed at its local Israeli R&D center, *Samsung's* phone camera technology is based on its local R&D center's technology, *IBM's* storage solutions include Israeli technological innovation, and many more.
Those multinational corporations operating in Israel attribute great value to their local operation. This value is obviously not related to the local market size, but to the local partnerships and/or the local R&D centers importance to their global activities.

One way of estimating the value of the local partnerships and/or local R&D centers to the multinational corporations is to look at the share of patents with Israeli inventors - out of the total number of patents of the multinational corporations operating in Israel.

When looking at patents granted over the last decade, one could see that:

- 12.5% of *Intel's* patents have an Israeli

inventor
- 13% of *Sandisk's* patents have an Israeli inventor
- 6% of *Cadence* patents have an Israeli inventor
- 5.5% of *Applied Material's* patents have an Israeli inventor
- 4% of *Motorola* patents have an Israeli inventor
- 3.5% of *IBM's* patents (noting that IBM is the largest patent filer in the US) have an Israeli inventor
- 3.5% of *General Motors* patents have an Israeli inventor

And out of the patents granted during 2018 (partial list):
- 3.5% of *Microsoft's* patents have an Israeli inventor
- 3% of *Facebook's* patents have an Israeli inventor
- 3% of *Qualcomm's* patents have an Israeli inventor

But why do these multinational corporations (and others) file patent applications **in Israel**?

Israel's is a small country with a relatively low market value when compared with other economies. There seem to be several reasons for this.

(1) Since many competing multinationals operate in Israel, it has become a place where each would like to establish a monopoly over certain technologies, thereby preventing others from developing the same technologies in Israel, possibly using manpower that developed those technologies while working for their competitors.

(2) (2) For multinationals having local partnerships, filing local patent applications establishes the ownership of those parts of the partnership each side brings to the table. In many cases, knowledge is transferred between partners, and it is absolutely mandatory to establish the ownership of such knowledge prior to sharing it with partners.

(3) For multinationals having local R&D centers, there is an understanding that the next role of your current employee, which is exposed to your most advanced technology, may well be working for your competitor. Various attempts to limit employees from working for competitors via employment agreements have been aggressively limited by local labor courts, which safeguard the constitutional freedom of employment.

An engineer working for *Google's* local R&D center, may find herself working for *Microsoft's* local R&D center. Clearly such employees have access to state-of-the-art technologies, which even if they do not intend to share with their next employer - it naturally occurs as the knowledge they've gained while working for their previous employer does not - and cannot - simply disappear.

Marking the boundaries with patents reduces some of that risk as employees which are aware of the fact that certain technology is patented (or patent pending), will more likely make a stronger effort to avoid using it while working for their next employer.

(4) Some multinationals also manufacture in Israel, and in these cases, clearly, they aim at protecting their Intellectual Property (IP) locally, aiming to prevent others from manufacturing competing technologies, while competing over the local manufacturing manpower.

(5) Litigation costs in Israel are substantially lower than litigation costs in the US or in the European Parliament for example. This can enable enforcing patents at relatively low costs, which in turn reduces the risks when starting litigation in other territories, where litigation costs are substantially higher. So, Israel can serve as a test case for future more expensive litigation.

(6) The Israeli Patent Office offers a fast track for examination of patent applications whose first filing is made in Israel at a low cost.

In many cases, a patent application can be granted within less than 12 months, which enable filing corresponding patent applications via Patent Prosecution Highway agreements to which the Israeli Patent Office is party, including the US, EP, CN, CA and others.

These are some key points which exemplify the importance (and benefits) for multinationals to consider Israel as part of their global IP Strategy while noting the importance of the Israeli eco-system and its characteristics.

About the Author

Adv. Asaf Shalev is founding partner at Shalev Jencmen & Co., an Israeli well-known patent attorneys and advocates firm.

TechnoBrew contributions by Aileen Schultz:

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- Could regulatory frameworks actually progress tech...
- Policy, Governance, Legislation: Whose Role is it...
- Are emerging markets dominating, or just levelling...
- Open Internet, really all that sensible?
- Global Connectivity, a Path to Justice
- Identity for All - A Crisis in Demand of Input fro...
- New Series Announcement: "TechnoBrew'...

An Essay on Legal Engineering: From Confusion to Clarity

By Esen Esener, Legal Engineer on the blockchain

I remembered the term legal engineering once again in a time when I was searching for a title to explain myself after having written about smart contracts and found myself very much interested in the blockchain technology. After all, if we can program a contractual relationship with smart contracts, the blockchain technology should be a legal technology and I can call myself a legal engineer if I learn how to code or at least know how to reflect legal knowledge on this technology. So, I was curious and applied for some legal engineering/technologist positions in the legal tech industry. I had interviews which confused me a lot. I realized many times that term is misused. This is how the idea and need for writing about legal engineering were born because *legal engineering in the sense of the legal tech industry is not legal engineering. It's an application of an IT professional's perspective on legal services.*

Newborn Professions in the Legal Industry

Richard Susskind, who is a very well-known legal scholar, discusses in his book Tomorrow's Lawyers, the radical changes in the legal market, the new landscape and prospects for young lawyers. Under the latter, he predicts new jobs for lawyers and summarizes it in the table below.

Table 11.1 New jobs for lawyers

The legal knowledge engineer
The legal technologist
The legal hybrid
The legal process analyst
The legal project manager
The ODR practitioner
The legal management consultant
The legal risk manager

Tomorrow's Lawyers Oxford University Press 2013 p.111

For the sake of this article, I limit the explanations only with the legal knowledge engineer and the legal technologist.

Legal (Knowledge) Engineer

Susskind states in his book:

> *"When legal service comes to be standardized and computerized, talented lawyers will be required in great numbers to organize and model huge quantities of complex legal materials and processes. The law will need to be analysed, distilled, and then captured as standard working practices and embodied in computer systems. The result of this might be, for example, an online legal service, or it could be that the law is seamlessly embedded in some broader system or process.*
>
> *Developing legal standards and procedures, and organizing and representing legal knowledge in computer systems, is irreducibly a job of legal research and legal analysis.*
>
> *[...] If a modern legal business intends to compete on the strength of its first-rate standards and systems, then it must have first-rate lawyers engaged in building them. These lawyers will be legal knowledge engineers" [1].*

Briefly, a legal knowledge engineer is a lawyer or jurist who develops legal standards and procedures in computer systems. According to my understanding, this person's legal knowledge is more important than technical knowledge. Legal engineers do not need to code. However, they need to know enough about the system in which they want to embed legal rules.

Legal Technologist

To differentiate a legal engineer from a legal technologist, Susskind defines a legal technologist as someone who bridges the gap between law and technology by having enough knowledge on systems engineering and IT management and at the same time by being trained and experienced in the practice of law [2]. These are the people who can build online legal services or other computerized forms of legal services.

Current Approaches on Legal Engineering in the LegalTech Industry

The Approach of A Law Firm

A job advert of a local law firm in Germany defines the role legal engineer as a jurist who joins in the design of effective editing process and companies its practical implementation, supports the office in the legal case processing, works with the development team in the development and implementation processes, supports in the development of solutions for different legal issues, works with lawyers and contributes to the preparation of written pleadings. The position does not require any coding skills. It requires only a very good technical understanding.

For this position, I got interviewed. Indeed, it is not required to know to programme. However, it requires logical thinking as the firm partially uses decision trees in legal case management as each data of a case is within the tree and any change on the tree changes the outputs. Therefore, to me, this position requires using some of the engineering principles in legal case management.

The Approach of A Legal SaaS Platform

Monax, which is a British SaaS platform for the management of the contractual obligations, defines legal engineering as a "reliable configuration of future events in code enabling humans to make decisions and commitments today". The term also includes a combination of legal design and software engineering which enables automation of rights and obligations in smart contracts.

The Approach of A Law-Firm-Like Firm of Legal Engineers

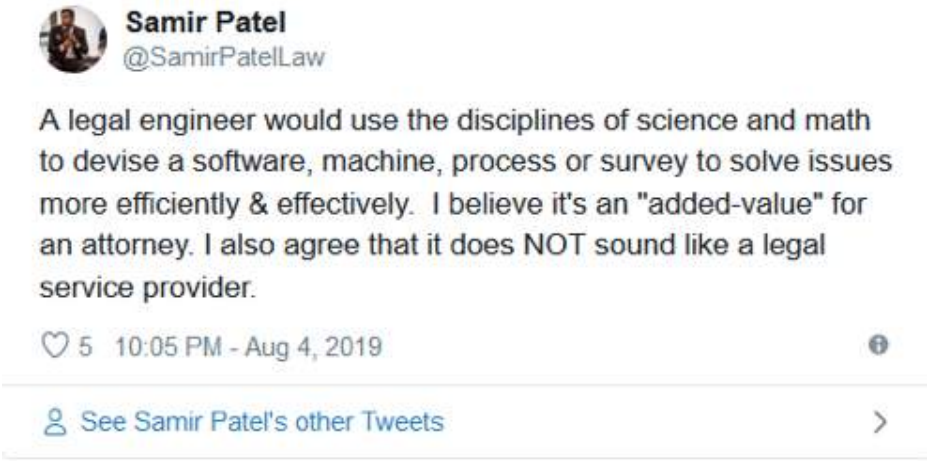
Peter Lee of Wavelength, a regulated firm of legal engineers, states that there are different variants within legal engineering. To him, some legal engineers have a deep focus on a particular technology or are especially adept at low code platforms. In one of his posts, he lists the common traits of legal engineers:

1. Having legal training (although it is not necessary)
2. Having empathy for both lawyers and technologists
3. Having impatience for or dissatisfaction with the level of productivity of legal services
4. Being brave enough to experiment
5. Having imagination for creating new legal technologies
6. Being pragmatic enough not to overlook existing tools for the sake of the newest technology
7. Getting some inspirations on how data can be transformed, curated and presented.
8. Having a nagging feeling of "there must be a better way" for the existing processes.

If someone has any of these traits, she/he might call him/herself legal engineer.

All explanations above have given me an impression that the legal tech industry very often mixes up the terms of legal engineer and legal technologist and sometimes uses one for another. There is nothing wrong in asking the individuals to be a logical or data-driven thinker or to map and optimize workflows. However, Susskind's definition of legal engineering sounds more like intellectual legal work than building decision trees. I think this tweet of Samir

Patel summarizes the best how the legal tech industry currently sees legal engineering:



Legal Engineering in the Blockchain Industry

I have met some people in the legal tech industry who see the blockchain technology as something different and think that it is not a legal technology. They might be right. As currently, many of the technical solutions provided for the problems in legal services are not blockchain-based. Besides, the focus is often on B2B services. However, to me, it would be wrong to say that blockchain and legal tech are two different worlds.

According to Susskind's definition of legal engineering, "developing legal standards and procedures, and organizing and representing legal knowledge in computer systems" look like the main tasks of a legal engineer. One of the ways to represent legal knowledge in computer systems is to embed legal knowledge in such systems. At this point, the blockchain technology and particularly smart contracts are excellent tools because they allow legal engineers to set and code legal standards for the governance of legal relationships.

As Jake Goldenfein and Andrea Leiter state in their article "Legal Engineering on the Blockchain: 'Smart Contracts' as Legal Conduct":

> *"In many ways, the engineering of discrete computational transaction modules on blockchain platforms is a form of 'legal standardisation'. This legal standardisation is not solely concerned with building legal protections into the technical architecture (Pagallo, Durante, and Monteleone 2017), but rather facilitating computational forms of legal conduct. Groups like the Enterprise Ethereum Alliance,4 Mattereum (see e.g. the Mattereum White Paper, undated), Open Law (2017), Agrello (2017),5 the R3 Consortium (2018), Common Accord (undated), and Legalese (2017–18), in different ways, are building libraries of machine-readable transaction modules that correspond to natural language contracting elements" [3].*

Also, Davidson, de Filippi and Potts state "A new class of legal engineers is now writing smart contracts that can transfer value, pay for real world property and services, license intellectual property, and establish technical rule systems for new forms of organisational and institutional coordination [4]".

All of the above shows that the blockchain technology needs a legal standardization which can only be done by legal engineers.

Legal Engineering as the Sub-Branch of Token Engineering

Token engineering is an emerging scientific discipline requiring an interdisciplinary work of professionals from economics, data science, engineering and law. It is also where legal engineering is needed.

At TEGG, Shermin Voshmgir suggested a new token taxonomy instead of utility and security token categorization. Voshmgir classifies tokens as **asset and access right tokens** which require *legal engineering* and **purpose-driven tokens** which require *economic engineering*.

Asset and access right tokens need legal engineering because they are the representations of physical assets on the blockchain. The smart contract of asset tokens governs their ownerships of the assets and their transfer. Even though an asset does not allow fractioned ownership, it becomes divisible by tokenization.

> *"In order to tokenize a property, for example, one generates a token with a smart contract, and associates a value with that token which corresponds to that of the real asset. The ownership right in such an asset and its corresponding digital representation can be divided into parts and sold to several (co-)owners. Even if a token represents a physical asset that is not divisible, like a piece of art or real estate, the token itself is divisible. This allows for increased market depth and liquidity to asset classes with prohibitively high economic buy-ins" [5].*

Asset tokenization allows fractioned ownerships. Depending on the jurisdiction, the law might allow only certain types of ownership and its transfer. Therefore, a legal engineer should design asset tokenization from a holistic perspective by taking into consideration of both the mechanism design and the whole legal ecosystem. The ownership of an asset and its transfer should be coded in the way that the law allows.

Another example of legal engineering would be coding a DAO which is similar to a traditional legal entity, like a company or an arbitration institution. A legal engineer can create a legally compliant corporate DAO by designing its governance model based on corporate law.

While designing and programming legally compliant smart contracts a legal engineer will have to find an answer to some existent questions: What happens when the contract has a bug and makes an illegal (both on the code and legal level) transfer? How to make sure the contract reflects the law correctly? Do we need a natural language contract besides a smart contract? These are the questions leading us, legal engineers, to put hours of intellectual efforts on standardization of the law and on embedding the legal knowledge in smart contracts. In my opinion, this is very much in line with Susskind's definition of legal engineering and ***legal engineering gains more sense with blockchain technology.***

Notes

[1] Susskind, R. (2013). *Tomorrow's lawyers*. Oxford: Oxford University Press, p.111.
[2] ibid 112.

[3] Goldenfein, J. and Leiter, A. (2018). Legal Engineering on the Blockchain: 'Smart Contracts' as Legal Conduct. *Law and Critique,* [online] 29(2), pp.141–149. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3176363 [Accessed Aug. 2019].
[4] Davidson, S., De Filippi, P. and Potts, J. (2018). Blockchains and the economic institutions of capitalism. *Journal of Institutional Economics,* 14(4), pp.639–658.
[5] Voshmgir, S. (2019). *Token Economy*. 1st ed. Berlin: BlockchainHub Berlin, p.215.

About the Author

Esen Esener is a Turkish lawyer based in Berlin with a particular interest in blockchain and law. She holds two master degrees in IT & IP law from Germany and Norway with a thesis on "smart contracts from the European contract law perspective". Her thesis on smart contracts was one of the first theses on blockchain in the legal field.

She lately gained experience in Fintech industry and keeps expanding her knowledge about blockchain. As a personal project, she writes on her blog about various topics on legal aspects of blockchain and legal engineering. She was selected as a mentor at Diffusion Hackathon in Berlin in 2019 and have recently been a guest speaker on the "the Blockchain Lawyer podcast". (*Photo by Markus Spiske on Unsplash*)

Photo by Markus Spiske

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The Rainmaker's Requiem

By Wendy Merrill, Founder & Chief Rainmaker of StrategyHorse Consulting Group

The traditional law firm model is dying a long, painful death.

As tried and true rainmaking techniques gasp their last breaths, partners with their eyes on the future are starting to worry. Managing partners and their contemporaries around the globe are mulling over passing their batons to their junior counterparts but are starting to realize that there aren't too many eager hands that are ready to grab their seat at the leadership table. The once-full leadership queue that used to drive firms forward is much less crowded than it once was, and this is threatening the legacy of firms worldwide – and the pocketbooks of partners eyeing retirement.

Younger attorneys are often not interested in climbing the leadership ladder in their firms.

Most are preoccupied with an existential wrestling match between their interest in practicing, their need for a steady income and their commitment to spending time with family and friends, and their employers are unable to provide them with satisfactory solutions. The only way to secure sustainable growth and an enduring legacy is for senior partners to step up and invest in their less-seasoned talent. The right investment is *not* sales training, traditional business development coaching or bigger marketing budgets. Instead, tomorrow's presumptive leaders need to develop **leadership skills** – which, incidentally, is not taught in law school or in typical associate programs found in small, mid-size or even BIGLAW firms.

A lawyer who possesses stellar technical ability, has been published 100 times, teaches law school courses and is recognized by her peers as an outstanding professional is still totally unprepared to be charged with contributing to the overall growth of the firm. Being a skilled attorney does not a rainmaker make. Nor does lawyering lend itself to business savvy or management ability. In most communities, there is no shortage of good/great/smart/lawyers to deliver quality work to their clients, but if firms do not begin strategically planning for the future by empowering their younger attorneys to make a commitment to the overall growth of the organization, mass exoduses will ensue.

There are 4 critical elements to making *lawyers* into *leaders*:

- Recognition,
- Transparency,
- Advocacy and
- Empowerment.

Recognition

The biggest fear of the Millennial generation is failure. Of course, no one *enjoys* failure, but professionals in their 20s, 30s and even early 40s share a paralyzing fear of making mistakes and disappointing others. I see evidence of this on a daily basis in working with younger lawyers, and when I share my observations with those charged with their development, there is always disbelief. This fear has been the Achilles' heel for an alarmingly large number of associates and junior partners, regularly sabotaging their business development and origination efforts. In fact, many of these lawyers may *seem* confident, but they are actually incredibly insecure. They need their more seasoned counterparts to provide the regular guidance, support and reassurance they need to encourage them in their rainmaking efforts, which is usually a challenge considering the senior attorneys likely did not receive anything of the sort from those managing them.

How can senior partners better understand how to help their younger colleagues? It's simple, ask them. There is nothing more effective than creating direct lines of communication throughout the firm. Senior leadership must make sure that they take the time to understand the motivation of their younger staff before they impose their own vision on those responsible for getting the majority of the work done.

Transparency

In the eight years I have been working with attorneys and law firms, I have never encountered a firm that had a clear and detailed path to partnership to share with their partner-hopefuls.

I've heard everything from the fear of "making promises" to "unproven" lawyers, to the fact that "it's just not done," to a chorus of "I don't knows" as excuses for the absence of a partnership development program.

Once upon a time, it was perfectly acceptable for attorneys to overwork themselves in the hopes of getting tapped to join the partnership table. Other than origination goals, there were little other criteria provided to ambitious lawyers to help them position themselves to join the leadership queue. Those days are over. In addition to their massive fear of failure, the Millennial generation demands transparency, something utterly foreign to most law firms. They need to know what to expect from their efforts before they commit their time and energy to any endeavor.

This includes not only the rewards, but also a clear indication of sacrifices that may be necessary and the resources the firm is willing to provide to support them on their professional development journey.

Advocacy

As I explain in my book, *Path to Impact: The Rising Leader's Guide to Growing Smart*, Millennials were raised like veal. The advent of technology and the fact that most younger professionals were essentially born with a smartphone in their hand, have crippled their ability to effectively advocate for their needs due to the fact that their self-sufficiency muscles were never allowed to develop the way those of the Gen X and Baby Boomer generations were.

This presents a huge challenge in today's law firms because senior partners expect their younger colleagues to fend for themselves when it comes to figuring out origination, client management and firm politics. This is a dangerous practice that is one of the biggest contributors to firm turnover, a very real threat to firms of all sizes. The assumption that junior staff does not need careful and consistent guidance from their senior colleagues is a guaranteed way to kiss an enduring firm legacy goodbye.

I am not promoting the idea of partners reading the minds of their associates, but the key to success lies in the younger lawyers' ability to eventually advocate for themselves, and this can only be developed with the help of their supervisors.

Empowerment

Marketing budgets are worthless if they are not accompanied by strategic business development plans that are individualized and tailored to each attorney's interests, strengths, goals and challenges. Most firms will assign each lawyer with origination expectations and a bucket of funds that are supposed to be used for "marketing". In this case, there is usually a loose directive to use the money towards entertaining clients, attending conferences and paying for various networking events. Time and time again, I've seen attorneys who either end the year with their budget barely tapped, or those that blow all their funds on 3 large networking events, with nothing left to complement a more strategic approach to growth.

Blown marketing budgets are an example of wasteful spending in law firms that should be generating a robust return on investment. If each attorney felt more empowered to make sound decisions in terms of where they spend

their time, energy and money, they'd be less stressed and generate more business.

Empowering young lawyers to make sound decisions is not just about bringing in new clients, it is also crucial to setting the stage for the next generation of leadership. Attorneys that are considering eventually taking the reins must be equipped to do so with a comprehensive program for leadership development. There are many ways to provide leadership development support for aspiring partners, but the most important aspect of any investment is the buy-in from the future leaders themselves. No matter how great the coaching, mentoring or workshop, if associates and junior partners struggle with seeing themselves at the leadership table for whatever reason, firms will be challenged in reaping a healthy return on their investment – and will also face an uncertain future.

What can your firm do *right now*? Here are a few tips on how to insure the longevity of your organization:

- Instead of allocating one sum of money each year for a combination of marketing and business development, firms should have three separate "buckets": Marketing, Business Development and Professional Development (specifically *Partnership Development*). All firms need rainmakers, but without qualified and informed leadership, no amount of new revenue will save a sinking ship.
- Create (internally or in partnership with an outside resource) a formal *Path to Partnership* program that provides younger attorneys with a clear idea of what it takes to become a partner as well as what they'll need to do to excel in a leadership position.
- Encourage and facilitate mentoring programs, both internally and with outside resources.
- Maintain a clear and open line of communication between junior level staff and senior partners. Some conversations will push people out of their comfort zones, but as long as they are appropriate in tone and language, an active dialogue will always improve morale.
- Be sure that the firm's brand is deeply understood by all lawyers, and that senior leadership consistently sets the example for the culture and level of service that clients regularly receive.

About the Author

Wendy Merrill is the Founder & Chief Rainmaker of StrategyHorse Consulting Group. She is committed to helping impact-oriented ambitious professionals and Rising Leaders to realize their growth potential by strategically navigating obstacles to success that are often created by themselves and others. Through coaching, workshops, strategy sessions, speaking and her bestselling book PATH TO IMPACT: THE RISING LEADER'S GUIDE TO GROWING SMART, Wendy focuses on preparing tomorrow's leaders to steward their organizations and communities into the future. In both her personal and professional life, Wendy enjoys mentoring professionals and entrepreneurs, and is a proud winner of the Greater Baltimore Committee Bridging the Gap Award, given to leaders that foster the success of women and minorities in business.

She also sits on the Advisory Board of University of Maryland Baltimore County's graduate program in Industrial Psychology and Organizational Development and is a Director on the Board of I Am Mentality, a Baltimore-based leadership development program for at-risk youth.

Wendy has worked with attorneys and growth-oriented firms of all sizes and from all over the globe and is a frequent presenter at national and international associations of lawyers. She lives in Baltimore, Maryland with her husband and 3 children.

Law - the cornerstone between AI and trust

By Roxana – Mihaela Catea, litigation and commercial lawyer, and assistant professor in Commercial Law at Nicolae Titulescu University, Bucharest

Where do we stand?

Where do we, as humans, stand in a world where you can buy your groceries online, meet your soulmate online or build a successful business from your PC without ever leaving the house? Maybe soon you'll even get legal advice on how to get a divorce from your neighborhood friendly AI, who's secretly lurking in your mobile phone at all your conversations with your exes, who knows?

Imagine how easy it is to simply execute an online contract by answering simple questions from a chatbot and finally signing the contract by drawing your signature in the designated screen. Oh, but you don't have to imagine it since this is how most contracts are concluded nowadays. If you believe this is too modern for your taste, just wait until smart contracts fully step in and all your well-refined-clauses are reduced to computer code, stored and replicated on the system and supervised by the network of computers that operate the blockchain.

What could happen?
But imagine if your AI-powered chatbot mistake your identity with the identity of a non-existent person [1] or if Siri fails to call the police when you ask and instead plays very cool tunes by the Police while you are robbed of all your possessions?

These scenarios could happen all over the world. Just think about a situation in which the robots currently cleaning Singapore [2] airport confuse the quantity of detergent and a dangerous substance leaks and produces harmful effects to children. Or think about what could happen if a child suffers emotional trauma while witnessing tests of a highly-advanced robot dog [3] alongside US police officers and the parents request material compensation for his prejudice for not being informed of such tests and for not testing the impact of such robot dogs on citizens prior to the test itself?

Who shall be responsible?
The producer for not performing trial tests on the impact of the new technology before releasing it for actual viability tests?

The programmer for not expecting and not including this scenario in the AI program?

The AI for not learning as fast as it should and for failed to identify the actual situation and to act as the user intended?

Or the user, for not properly conveying the intended instruction to the AI?

For the moment, no certain answer can be provided to these questions by applying the current legal framework.

What should attorneys do?
Us, as attorneys not knowing how to program a bot or to wire an AI system in order to deliver a response and learn from its ever-changing environment, may be subject to a very high risk when taking a new client, who possibly eluded legal dispositions and committed money laundering, for example. Surely this may not be a problem in certain jurisdictions, but in most European countries [4], a lawyer is obliged to declare whether its client has committed money laundering. Otherwise, the lawyer is held criminally liable, as well, for not disclosing such information to the competent authorities.

Of course, the consequences generated by not knowing what AI entails have been analyzed and certain measures have been taken for the protection of the interested parties. Finland, for example, has come up with a solution of increasing digital alphabetization among European citizens. During its EU Presidency, Finland developed a free online course called AI Elements [5], designed to guide even the most refractory individual within the intertwined jungle of artificial intelligence. Lawyers can also benefit from such a course but is this actually the proper solution?

What about citizens who are not at all connected to the legal system? Should they also take courses in order to learn how AI works?

Or do they simply trust the AI process and the system and accept its consequences without questions?

Reforming the legal system

The key feature of any successful system is the trust it generates for its stakeholders. In case of an AI - based system, trust can be achieved with mutual support from both lawyers and IT experts, by creating a solid legal framework regulating any aspects regarding the liability and risks of AI products.

Considering the large investments made by particulars in technological applications, the European Union has already created the first steps for creating a functional Digital Market.

On 10 April 2018, 25 European countries signed a Declaration of cooperation on Artificial Intelligence.

On 8 April 2019, the High-Level Expert Group on Artificial Intelligence (AI HLEG) published the Ethics Guidelines that set out three components for Trustworthy AI: lawful AI, ethical AI and robust AI.

Also, in June 2019, the AI HLEG presented their Policy and Investment Recommendations for Trustworthy AI (the Recommendations) during the first European AI Alliance Assembly. The emphasis of the AI HLEG with respect to the legal policies envisaged to be adopted was directed towards a risk-based approach to the regulation process in order to ensure that AI risks are assessed and properly dealt with. In the words of the AI HLEG, "*the higher the impact and/or probability of an AI-created risk, the stronger the appropriate regulatory response should be".*

Apart from the focus on risks, another important aspect revealed by the Recommendations was that it is necessary to re-evaluate the currently enforceable legal framework in order to adapt it to the necessities of the AI systems recently created.

Future steps

The bridge between a healthy AI and an adequate legal system is created through trust. Trust is formed by respecting society's rules. These rules should encompass the mitigation of risks, liability and fairness of decision-making. Law makers should to convey a message of cross-border collaboration in order for this legal framework to be effective and provide equal guarantees for citizens worldwide.

But for the moment, technological progress is way ahead of the creation of any enforceable legal rules. Until humanity establishes a proper, functioning and ethical legal framework governing AI products, the stakeholder's reluctance towards AI systems shall prevent their large-scale use.

The role of a legal professional like myself is to adapt and adjust the current legal framework so that the final beneficiary, the citizen, is protected, and ethical values are not sacrificed on the altar of developing technology. Attorneys are thus challenged not only to contribute with

suggestions to drafting new legal provisions but also efficiently apply current available law in order to foster the safe use of emerging digital solutions.

Notes

[1] https://thispersondoesnotexist.com/
[2] https://www.ctvnews.ca/sci-tech/singapore-launches-friendly-robots-to-help-clean-the-city-1.4513084
[3] https://www.independent.co.uk/life-style/gadgets-and-tech/news/robots-police-dog-spot-boston-dynamics-a9218491.html?utm_term=Autofeed&utm_medium=Social&utm_source=Facebook#Echobox=1574789575
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=RO
[5] https://www.elementsofai.com/

Useful links

- https://www.coleurope.eu/news/eu-and-global-policy-artificial-intelligence-progress-report
- https://ec.europa.eu/knowledge4policy/online-resource/artificial-intelligence-policy_en
- https://ec.europa.eu/digital-single-market/en/policies/76174/76175
- https://ec.europa.eu/digital-single-market/en/artificial-intelligence
- https://futureoflife.org/ai-policy-european-union/
- https://www.oecd.org/going-digital/ai/
- http://www.europarl.europa.eu/doceo/document/A-8-2019-0019_EN.html

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About the Author

Roxana – Mihaela Catea is an experienced litigation and commercial lawyer affiliated to Bucharest Bar, Romania. Roxana is a PHD student and university assistant professor in Commercial Law at Nicolae Titulescu University, in Bucharest, Romania. Roxana is also passionate technology lecturer and writer who integrates legal technological progress in her academic research and professional practice.

Business Growth in The Legal industry: Then, Now and Next

By Sun Dahan, Lawyer, digital Marketer and entrepreneur

There are many challenges to the legal profession in 2019 and beyond. One challenge is the difficulty for lawyers and firms to differentiate themselves in a very saturated industry.

With that in mind, one would assume that every lawyer, partner and firm will allocate some time over the week to work on marketing and business development related initiatives. This is not the case.

Legal Challenges in 2019 and beyond

One hurdle may be the adoption of innovation in a very conservative profession. Some still believe that quality legal service is enough to keep the business running in this tough market.

The other side of the coin is the simplicity to market yourself to different segments in the legal market. With an increase in innovation and technology, the very conservative legal industry is slowly adopting and progressing and with it, vetren attorneys, partners and firms.

Legal Marketing: Not What It Used To Be

The legal industry is undergoing an enormous change. That includes marketing. Attorneys and firms can no longer rely on traditional marketing such as print advertisements, direct mail, newsletters, and flyers to do the work - and they don't.

Lawyers are on Facebook, Twitter and Linkedin and are doing what they are expected.

The bottom line is that in 2019 and beyond, even the legal profession is becoming more humanized. Attorneys are people and clients (big and small) won't accept a distant lawyer that speaks a language they do not understand.

Lawyers are already using Instagram and Snapchat to share stories, some professional and some personal. It is the right mix of both to build that trust and rapport that attracts clients. Why is that? Because stories, by their nature, are typically created instantly and are more authentic. This shows the real you and is a great way for potential clients to hear your voice.

For Solo practitioners and small firm the challenge is time and resources (and they don't have both). If you're offering a free consultation, consider offering it via video-chat. Skype, Zoom and WhatsApp makes it easier to connect with potential clients anytime, anywhere.

For bigger firms, it's a different game with partners as "RainMakers", going after clients and deals. The challenge here is different: how to go after big accounts without selling too much and at the end, it comes down to the culture. Firms are now becoming clients' partners for success - if you win, we win. New offerings such as client services and support are emerging.

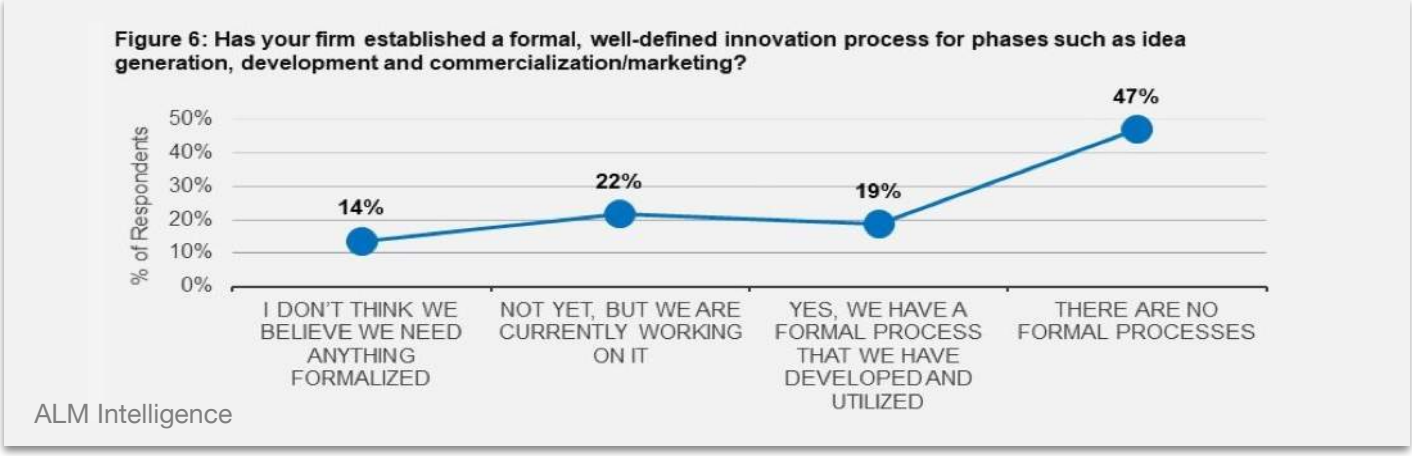
Conservative Going Progressive

Innovation should start from within. If a partner at a firm does not value the importance of one marketing initiative or is not open to embrace new technology, then most likely such a move will never take place.

Even today there is a big disconnect between law firm leadership and associates on how they perceive innovation at a firm. This Canadian study by McGill University (2017) suggests that Canadian firms use Innovation as a marketing tool and don't actually take action.

So, where this resistance and lack of will to act is coming from? There are a few reasons for that. And while the billable-hour is still what matters most for firm leadership, clients are more interested in "value-added" services, and by that I mean helpful tools for free.

Saying that, if there is a way for firms to provide "free" (or almost free) tools and solutions



Only 19% have a process for innovation

to their clients so they could lower their expensas using technology and innovative approach, firms that will be quick to react will win every client's heart.

Legal Innovators

What is legal innovation in 2019 and beyond? DIfferent firms have different approaches as there are different ways to innovate in the legal industry. Below are just a few examples that shows disruption has started already and is gaining speed.

> "The legal market has been one of the few market places that still use old standard business concepts"
> *Robert Gunderson*

Orrick is a great example. The firm allows associates to put 50 hours of billing credit towards innovation projects.

In addition, in 2018 Orrick announced a new corporate venture fund to support legal-tech innovation, with Orrick typically acting as a beta customer.

Through Orrick Labs (the part of the firm's approach to transform the delivery of legal services), they develop new technologies not available in the market, to engage the firm's lawyers and staff in innovation, ranging from hackathons to other incentives.

Reed Smith also gives attorneys up to 50 hours of billable hour credits for putting time in new innovations. This is a great way to change what people think about what can be done and the mindset of attorneys across the firms.

Robert Garmaise, Fasken's Chief Innovation Officer is taking a product point of view. From our conversation, he tells me they asked themselves: "*How can we create products to help clients consume legal service in a different way*?" This changes processes and creates new tools.

The 156-year-old Toronto-based firm Osler, Hoskin & Harcourt has created a platform called Osler Works that automates a variety of tasks for clients at a lower cost than usual. In the past two years, the firm has launched four innovative tools that supports their clients.

How to Start Innovating

Innovation doesn't start in a day. It requires time and resources like anything else. How open are you to legal innovation? Ask yourself the following:

- Are you open to change long time processes?
- Do you allocate funds for innovation efforts such as platforms and apps for client needs?
- Do you use any legal technology at your firm?
- Does your firm have someone dedicated to the responsibility of law firm innovation?

You can always start by reading a book. The short list below is a must-read books for Lawyer that wants to innovate:

Successful Innovation Outcomes in Law (Dennis Kennedy) - the book discusses key pieces of successful innovation processes for the legal industry.

Tomorrow's Lawyers (Richard Susskind) - the book introduces the new legal landscape and offers practical guidance for those who intend to build careers and businesses in law.

Kill the Company, (Lisa Bodell) tells companies how to start an "innovation revolution" and can be a great place to start.

For more inspiration, you can look at the Legal Innovation Zone at Ryerson University, Toronto, Ca, or Reinvent Law (the Legal Innovation Hub), Frankfurt, Germany, and see what innovative legal-tech startups are doing right now.

What is Next

It looks like some companies are more open to innovation and technology than others. This is no coincidence.

People drive change and if people are not open to it, change will not come on it's own.

There is something in the right mix of people. The mix of four generations that are working side by side in today's workplace: Traditionalists, Baby Boomers, Generation X, and Generation Y that is the key. In 2019 and beyond, everyone should speak up and every voice should be heard.

About the Author

Sun Dahan is a lawyer, digital Marketer and entrepreneur. He holds an LL.B and LL.M, degrees from Ono Academic College (Israel) and an MBA from Babson College (Boston, USA). He consults lawyers and startups on marketing, operations, strategy and business-development related matters. He is also the Co-Founder and Chief of Growth at Legably, a platform for connecting freelance attorneys with other attorneys for short-term projects.- Sun can be reached at sdahan@legably.com.

The Value Series

A ClariLegal interview with Sheila Murphy, President and CEO of Focus Forward Consulting LLC, and Chief Leardership & Talent Officer at WOMN, LLC

By Cash Butler, founder of ClariLegal and James Johnson, principal attorney of First Venture Legal.

We recently had the privilege to speak with Sheila Murphy, President and CEO of Focus Forward Consulting LLC, and Chief Leardership & Talent Officer at WOMN, LLC. Both organizations are dedicated to helping individuals and businesses achieve new business performance goals and higher career success. Sheila also serves as a consultant to the financial industry with Bates Group. Previously, Sheila served as a legal executive at MetLife for 24 years, ultimately serving as the company's Senior Vice President and Associate General Counsel, where she focused on litigation, regulation, and risk mitigation. At MetLife, Sheila also served as an executive sponsor for the company's U.S. Women's Business Network, was a member of the U.S. Task Force on Diversity, and co-chaired the company's Legal Affairs Academy, which provided developmental opportunities to the company's legal and compliance professionals across the globe. Prior to MetLife, Sheila practiced at the law firm of Thacher Proffitt & Wood.

We specifically asked Sheila about her work at Focus Forward Consulting. At Focus Forward, Sheila works with legal professionals at all stages of in their careers, but especially mid-level attorneys. For those at law firms, this often translates to senior associates and non-equity or newly-equity partners in law firms looking to increase their business, enhance their customer service skills, or plan their next career moves. For in-house attorneys, this means those individuals wishing to move away from being individual contributors to roles in upper management and executive positions where they can have greater impact on the organization. Sheila coachs her clients with their career development; in particular, one of the aspects of career development that she focuses on is ensuring her clients to better understand their value question – what value are clients of the firm or internal stakeholders looking for? what value can one provide to his or her company or firm? how does one go about facilitating conversations about value? To be successful as an attorney you must understand your value propositions and others must know it and appreciate it.

We began the interview by asking Sheila what value meant to her. Sheila deeply believes that adding value means moving one's organization forward. People who add value "aren't contributing just to today's needs but are forward-looking in terms of strategically aligning an organization for what the future may hold". For lawyers and legal professionals, Sheila believes that one way they can add value to their firms and organizations by developing talent— i.e, preparing for the work force of the future. Sheila notes that lawyers have not been historically good at this in past, instead often acting and being rewarded merely as individual contributors bringing in business for the firm. As a result, Sheila says that lawyers often may be less focused on the long-term needs of their organization, such as talent. Sheila argues that by devoting time and resources into developing talent, one leaves an organization in a stronger position than it is today; by developing a diversity of talent, one even adds greater value – as organizations with diverse talent outperform other organizations. In addition, by developing strong teams, senior attorneys can focus on higher value adds for both their clients and the organization. Sheila maintains that "firms and organizations that learn how to harness innovation and strategic thinking will have a competitive advantage in the future".

We also asked Sheila how her understanding of value has changed throughout the various roles in her career. Sheila begins by noting that her understanding of the concept of value changed as she took on increasingly senior roles. Specifically, Sheila says that, when she was in more junior roles her focus was on providing value to clients and internal stakeholders. Sheila notes that this was a narrower focus, since as she took on more senior positions her perception of value broadened as she began to "connect the dots", not looking at "just the advice you're giving on this matter or what you've been asked to look at". Sheila argues that, at a management level, one must begin to look strategically at how to provide value to one's organization, preparing the company or the law firm's clients for the future – being able to advise clients when a "change is going to impact every single type of deal you have or how technology can make you more efficient".

However, Sheila argues that lawyers can provide greater value to clients or internal stakeholders by taking a more holistic approach, which means becoming better positioned to provide customer service to or serve internal stakeholders and propel clients or companies to future success. Sheila notes that this approach involves asking "do you have the right specialties, are you using technology such as AI in the right way, are your processes efficient, are you looking at lean methodologies, are you looking at what may be coming in as competitive threats? Are you advising your clients on trends and insights?". Sheila argues that lawyers that strategically view these items provide value that is often not recognized in traditional law firm structures. Conversely, Sheila contends that an "eat-what-you-kill" approach in the legal industry serves as an impediment to value and moving forward.

We also asked Sheila about how clients, customers, and stakeholders have defined value to her throughout her career. Noting her time in legal executive roles, Sheila says that internal stakeholders define value in legal services as strategic thinking with a focus on solutions, honesty, and having a full understanding of the client's or the company's business and being able to deliver advice in a concise manner. Sheila says that this involves looking at not only the legal issues but also the ethical and reputational issues an organization may face.

We asked Sheila for her thoughts about how value is communicated in the legal industry and between lawyers and clients. Sheila begins by noting that in the legal industry, there is often little understanding about what clients value, what a client's business model is, or what the client is seeking from a firm's services. Sheila notes this occurs when lawyers fail to have the value conversation up-front and can be exacerbated into the next matter or engagement when lawyers also fail to conduct post-mortems to determine whether the client or internal stakeholder was provided with the value they sought. As she coaches her clients, Sheila says that client services focused on the delivery of value can be a way to distinguish oneself in career or business performance; she argues that attorneys who seek to rise up the corporate ladder need to exhibit a deep understanding of issues outside the strict scope of one's legal advice, although that is a concept that really isn't taught in law school. Sheila notes that the concept of value comes up in her coaching when she talks about client service and how the attorneys she works with approach the topic of value; Sheila tries to coach her clients to make conversation about the delivery of value part of the daily routine.

We asked Sheila whether she thought there were tools that were or could improve communication about value. Sheila begins by noting that attorneys need to spend time at the beginning of a matter or an engagement to determine what value means for that matter or engagement. Sheila also argues that both internal and external teams should be utilizing project management tools during an engagement or project, with a project manager ensuring that all stakeholders are on the same page. Sheila notes that billing or budgeting software can also be helpful in facilitating the value conversation, since it can spur a discussion between counsel and the client over how counsel is handling or staffing a matter. Finally, Sheila reiterates that having a post-mortem/wrap-up conversation is critical, since it can serve as a learning experience to help

attorneys improve their efficiency and delivery of value. It also can ensure that you maintain a client.

Finally, we asked Sheila for her final thoughts about value. Sheila argues that lawyers can fail to appreciate that, to create value for clients or stakeholders, it is necessary to invest time to develop oneself and one's team. Sheila advocates that attorneys need to make an effort to get out of their comfort zones and learn new skills and knowledge; however, Sheila notes that various personal and professional obstacles, which she terms "saboteurs", can make it difficult to push through to reach the next level of career or business success. A coach can add value by helping you conquer those saboteurs and appreciate that by valuing to others- you can further your own career success because clients want to work with the attorneys who bring the greatest value.

About

James Johnson is principal attorney of First Venture Legal, a Cambridge, Massachusetts-based law practice focused on corporate and transactional law for very-early-stage startups. James assists entrepreneurs and small business owners with corporate formation and structuring, contracts, commercial law, employment matters, and early-stage fundraising. His practice utilizes alternative fee structures to deliver value-based service to early-stage ventures.

In addition to practicing law, James works with ClariLegal, focusing on building out its innovative platform and spreading the word of ClariLegal's mission to reduce cost and complexity in legal vendor selection and management for law firms and corporations.

Cash Butler is the founder of ClariLegal A seasoned legal technology innovator, Cash has over 18 years of experience in the legal vertical market, primarily working in eDiscovery, litigation & compliance. Cash is an expert in legal vendor, pricing and project management.

ClariLegal is a preferred vendor management platform for legal services that improves business outcomes. Made for legal by legal experts. We match corporations and law firms with preferred vendors to manage the work through a fast and complete RFP and bidding process. ClariLegal's platform allows all internal client segments to improve business outcomes across the board – predictability, time and money. Learn more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“STAND OUT”

LAST BUT LASTING IMPRESSION - AUTHORITY ESSENTIAL TOOL

Series on building your personal brand, becoming the go-to expert and authority in your field by Itzik Amiel

Ready to become the sought-after expert your clients will want to work with and be willing to pay a premium to do so? Do you want to know how you are unique to your clients & how you can stand out in the sea of competitors? Are you the "best kept secret in your market?” If you want to know the shortcuts to build your personal brand and become the go-to expert and the authority in your field, DO NOT MISS this series by advocate Itzik Amiel, bestselling author and international speaker and the global authority on personal branding for professionals.

We’ve all heard “you only get one chance to make a first impression.” Albeit true, if you start off on the wrong foot with a business relation, with your client or with an interviewer or recruiter, is there no recovery? Are you doomed to fail? What about the last impression, does it count? Can it influence your authority building process?

Let me share with you a short story.

A few years ago, I went with my colleague on a business trip to India. We had a lot of great meetings scheduled for us. But something was different in this business trip.

We had a lot of interesting meetings. The atmosphere was good, the people were friendly and we got to talk about the reason we were there and on interesting business opportunities.

But every time when the meeting ended and we stood up to leave the meeting room, and thank our host, I felt something had changed. I could feel that the atmosphere twisted in a split of a second.

What was it?

I noticed that my colleague way of saying goodbye to the others was almost insulting. It was cold, showed no real care and interest and felt like he really wanted to leave the room.

He muttered a quick "Bye-bye" and left. He could just as well be saying, "Buzz off!". He was so warm at first and now...nothing.

I say that it felt, because I know it was not his intention.

No wonder, that this last behaviour stayed in the mind of the others and influenced the decision-making process of them. That was the moment, I realised the real power of 'last impression' while building your authority and relationships.

There are countless studies on the science of building relationships that show that other people form their impression of you within the first 30 seconds of meeting you.

But, you don't have to be a total hostage to the first impression counts phenomena, as you have a second chance to make a stronger and longer lasting impression at the end of the business meeting (or an interview).

Similarly, a study by Luchins showed that: the information presented last was more influential than information presented at the beginning (primacy, recency effect).

In psychology, last impressions are referred to as the Recency Effect. Essentially the last things we see or hear when we depart from a person tend to be the the most powerful memories that come back to us when we encounter that person again, or when we think about them.

If those last impressions are positive, our recollections will be more positive, even if our experiences up to that point are not.

For example, let's say that you encounter a not so friendly receptionist at an hotel, but as you leave the hotel manager shakes your hand, smiles, and warmly thanks you for your business, you will remember the manager's warmth more than the receptionist's chill when you think about your stay at this hotel.

The importance of last impressions should be obvious. They have the potential to undo all the hard work you've put into creating a positive authority and image.

It actually proved that your opening statements in a business meeting are important in the short term but after a period of time what you presented last is most important for building the relationships and more importantly building your authority.
This means that although first impressions do count, last impressions are more important in the long term.

Did you ever asked yourself how do some people succeed faster in building relationships than others? Why do some get business opportunities and others don't? Why do some get stuck in the growth of their business or their careers?

The answer, I've found, to all of these questions (at least partly) is making a lasting impression. This last impression is definitely a part of your personal brand.

During my law school studies we learned about "The Von Restorff effect" (named after psychiatrist and children's paediatrician Hedwig von Restorff), also called the isolation effect. Prof. Von Restorff proved scientifically that **the last item on a list has a long lasting effect.**

This is the same principle (known tactic) used by litigation lawyers (trial lawyers for my US friends). They save their most powerful argument for last and create a very powerful lasting impression.

Also as an international speaker myself - you use the same principle in your keynote. You come up with a perfect finale to your keynote presentation – one to bring the audience to applaud you and even give you a standing ovation. Powerful last impression!
The same apply in building business relationships & your authority.

If you consistently make a positive, memorable (genuine!) impact on your business relationships and clients and even your employees, you'll increase your chances of getting involved in the best opportunities when they come knocking on your door.

You need to verbalise your delight when you end a business meeting is even better. Don't leave it to chance. Use it in a networking meeting, on the phone and even in your emails.

Yes, I agree it is not so simple as It may sound. You really need to take a strategic approach in leaving that lasting impression.

So to help you out, here are **five tips** that'll help you make your mark, enhance your connections with your business relations and be remembered over anyone else in the room:

1. Be Authentic
You need to stop fearing from being judged by other in business relations.

If you be authentic, be yourself, and don't be caught up in trying to impress others, it will improve significantly your sincerity and your last impression.

2. Be people oriented
For years I disliked the approach in the corporate world – you need to make sure the higher-ups in the organisation know about your achievements, in order to get promoted.

No wonder why so many 'political' characters and non-authentic people were promoted to a higher positions before me in the organizations I used to work.

But this approach is never sustainable because it lacks authenticity.

Now, I definitely understand and know that what really counts is your authenticity and true will to help others. In the long run, that is the reason why people want to remember you for and want to see you succeed.

3. Be Empowering, Energising and Enlightening

Do other people feel energised after meeting with you—or exhausted?
Are you an easy person to speak with? Do you give the person with whom you're speaking undivided attention? Are you leaving conversations and business meetings making others feel empowered, motivated, and energised?

In my corporate career and also when I was in senior positions, I always believed that positive emotion accelerates innovation.
As such, I always made (and still do) a concerted effort to leave conversations and business networking events making other people feel inspired. And they usually do.

4. Be Pressure immune

You need to start paying attention to how you handle stress and pressure and start getting comfortable with it.

Remember: your ability to nail and deal with the pressure moments will define a lasting impression on the other people.

5. Be Bright & simple

Do you know what you're great at?

The answer to this question will give you insights and ideas how to offer solutions and bring value to discussions with others.

If you use simple language, clear and bright solutions to the other person, you'll be always remembered. So use it as part of your last impression.

Now, that you understand the importance of the last impression in business relations, you need to go out there and practice it.

TIP: In an interesting practical article of the Young Entrepreneur Council, you can learn to make a lasting impression in Under 5 Minutes by using 14 tips shared to ensure your business card is the least likely to end up in the trash can.

First or Last Impression – Which One is Lasting?

Although the first impression is important, the last impression can be equally or even more important. In a long discussion, what you say last can be remembered even more than what you said or did at the beginning.

Between the first impression and the last impression, there are many interactions that may take place. I'm not minimizing the importance of those. They must be managed as well. But at the end, the *last* impression should be the *final* impression that creates a *lasting* impression that will make the other person think back and say, "I want more of that" or if it is a potential client – "I want to do business with

her again."

Honestly, they both do.
The first impression sets the tone for what lies ahead; it sets expectations. The last impression is what we're left with; it's probably what we'll remember most about your brand.

BUT...

You won't get one without the other. There won't be a last impression if you don't get the first impression right. You know what you need to do.

Remember: "You never get a second chance to make a first impression" and "always leave them wanting more." Since First Impressions Count, but Last Impressions Count as well.

So now a question to you: What do you do to leave a last impression on your business relations? Please share your ideas and actions with me.

Want to discover more on how to build your authority in your field in a consistent basis and attract the right clients – and the steps you need to take?

Download **my workbook** [for free] **here** and answer all the relevant questions or schedule a strategy call here.

If you have any specific questions with regards to building your authority position and your personal brand or need our help in building your authority position and attract more of the right clients consistently, please send us an e-mail and share it with us. We definitely can help!

Make your LAST impressions LASTING!

About the Author
Itzik Amiel is considered the global leading authority on Business Development, Business Networking & Personal Branding. He is a sought-after international speaker, trainer, business mentor, & attorney-at-law. He is also the bestselling author of "The Attention Switch" & Founder of THE SWITCH®, the global community for professionals to grow their practice. Itzik teaches Lawyers and other professionals to attract and win their ideal clients by becoming seen as authorities in their field and to SWITCH their relations to Referrals+Revenue+Results.

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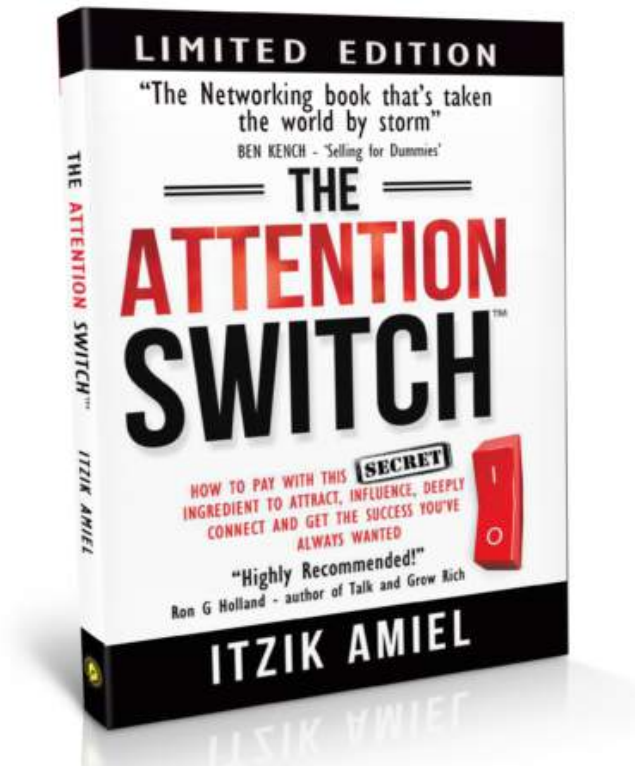

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End of Year and Beginning of Year
Sales in the Legal and LegalTech Worlds

By Nick Rishwain, JD, vice president of customer relations and business development for Experts.com

The end of the decade is upon us. By the time this article is released, there will only be 12 days left in the year. Leaving only a short time to wrap up those end-of-year sales and close the year strong. Do not be worried, with such little time remaining, we're also going to give you some insights for starting 2020 strong.

By the time you read this article, you may be wondering, is there anything you can do to make sales in the last 12 days of the decade? Yes. You can. You can still make sales in the last 12 days of the year.

End of Decade Email Campaign & Promotion:
If you get to work the moment you read this article, you can create a multi-email campaign, offering an end of decade promotion. Why "end of decade?" It stands out a little better than "end of year." Many companies will be sending a variety of "end of year" email campaigns. If you offer something slightly different, it will resonate better with the recipient of your offer.

This is the perfect time to offer incredible savings to your customers.

Using a catchy subject line about the decade coming to an end with a really great offer, you can close some significant end-of-year sales.

Whether you are a legal technology SaaS company subscription-based service or a family law attorney who knows many people look at starting the New Year with a divorce, this is the time to make an offer your customer cannot refuse.

For example, WordRake, a legal technology software company that helps you write and edit for clarity and brevity, recently offered a Black Friday/Cyber Monday sale. Offering forty percent off their one-year or three-year subscriptions. My friend, Ivy B. Grey, is WordRake's Vice President of Strategy, so I was lucky to receive some commentary on this sales offer. Ivy described this promotion as hugely successful! They tripled their sales volume for the Black Friday/Cyber Monday promotion.

Forty percent off is a huge savings. The thing is, WordRake rarely offers discounts on their services. This was a calculated move to close the year strong. The added benefit helps incentivize customers, who may be on the fence about purchasing the service, to decide. After that, you now have customers who learn the benefits of the service by using it at a discounted rate. If they love the service, and I'm certain they will, they'll be hooked and more likely to renew.

Many companies do not like offering discounts, so they offer discounts which are not convincing enough to close significant sales. You have to think of this as a way to get users. Bring customers in at a discounted rate so they have a chance to see the value of your service.

My employer Experts.com, an online marketing platform for expert witnesses and consultants, just completed an email marketing campaign for the month of November. We called this our "gratitude" promotion. To show our gratitude, we sold memberships for 15 months, instead of 12 months. In essence, the price of the membership stays the same, but customers receive a twenty-five percent increase in the membership term. To make this discount more convincing, we offered to grandfather-in the membership term. Now as long as those members continue renewing their membership, they receive a 15-month term for as long as their membership remains active. I can tell you from experience, this is a very successful offering.

Now back to your promotion with only twelve days left in the year. As we did with our "gratitude" promotion, I'd like you to think of something catchy, hence the "end of decade" promotion. Something that grabs the recipient's attention. For purposes of this article, I'm assuming readers are using email automation software. If you are not, that needs to be one of your first investments in the New Year.

Choose your discount amount for the end of decade promotion. If you're looking to end the year strong, I would encourage you to offer a fairly significant discount. You'll want to hit your email list with at least 3 emails in the 12-day period. There are some difficulties with this given the holidays. So, I encourage you to get the first email out on December 20th.

The follow up email, letting your recipients know there's only a few days left to take advantage of your compelling offer, should probably be sent out on December 26th. A lot of people will be in the office the day after Christmas because Christmas is in the middle of the week this year. Finally, I would send out the third email on December 31st. New Year's Eve is in the middle of the week, so many people will still be working. This final email should include a clear and convincing call to action. Let your recipients know the "promotion ends today!" Or, this is "their last chance to take advantage of huge savings before the new decade begins."

Take this suggestion and go out and close the decade strong!

New Year Email Campaign & Promotion: Starting the New Year off with a promotion is not going to be the best option for all businesses. It will really depend on what, and to whom, you're selling. Think about your buyer. In business-to-business sales, you may have more success by offering a New Year special. If you are a business-to-consumer service, depending on your target market, buyers may be tapped out and tired of spending after the holidays.

As I indicated above, there are some audiences who may do well with a New Year promotion, namely family law attorneys and legal technology companies offering divorce services. With many people looking to start the New Year by uncoupling, it might be beneficial to offer a New Year discount knowing in advance that January is a big month for divorce.

The New Year discount is really going to be based on your buyer's persona. If you are selling direct-to-consumers, you may wait to do any promotions until later in the Year.

February Email Campaign/Promotion: In the US, we have Valentine's Day (a romantic celebration) in February. Normally, it's a good idea to offer a promotion in parallel with an identifiable day or holiday. With that being said, our example of divorce promotions is not a recommended offer as a Valentine's Day promotion.

However, if you are selling a legaltech productivity tool to law firms, this could be a fun holiday to offer a Valentine's promotion. You can run an email campaign with subject lines like "show your staff how much you care this Valentine's Day." Or, "those with a big heart, give their team a simpler workflow."

As *LegalBusinessWorld* is a global publication, I'll offer another promotion that is likely far more fun than Valentine's Day. For those readers in Brazil, you have some spectacular options for a massive February Carnival promotion. I've never attended Carnival, but I've heard amazing things. With that said, I should also caution you, I'm not familiar with any cultural sensitivities around the event, so I have to make some assumptions. If these assumptions are incorrect, kindly ignore my advice.

With a national unifying celebration similar to Carnival, I would create an email campaign to begin February 1st and have it end the day before Carnival. In this campaign, I would communicate to your audience with four or five emails, offering a massive discount.

Similar in respect to the Black Friday/Cyber Monday discount offered by WordRake. For such a massive holiday, you can offer a pre-Carnival discount. Encourage your customers to take advantage of huge savings prior to Carnival. Make it a Carnival "blow out" promotion!

Close strong and start strong:
The point of this article is to emphasize the value of email sales and promotions. I'm very active on social media. So is my company. Although we make sales through social media, they pale in comparison to the number of sales closed via email marketing. As much as I personally dislike email, there is no doubt about its power and success.

Craft some fun subject lines. Have your promotion coincide with a holiday or other major identifiable event. Employ convincing calls to action. Use this format for your campaign:

First email – Notify your customers about the sale and nurture excitement.

Second email – Reminder that the sale is ongoing and that it is a limited time offer with huge savings.

Third email – Sent a day or two before the final email, or in some cases the third email will be the final email (i.e. "end of decade offering"). Reminding them the offer is ending soon, emphasize the date the offer ends.

Fourth email – Last day to take advantage of the offer. Make it clear that the promotion ends on the day of this email and make sure to inform them the date and time the offer ends.

The above format is a good guide for email campaigns. Such a campaign should never be less than three emails, and I would caution against sending more than 6 emails within a 30-day period. You want to build interest in the offer. You do not want to anger your customers.

Have a wonderful Holiday season. Go out and close the year strong.

About the Author
Nick Rishwain, JD, is vice president of customer relations and business development for Experts.com, and primary author of the company blog. He is fully immersed in legal technology professionally and personally. In his own time, Nick is the co-creator and host of a live video legal technology show called *LegalTechLIVE*. The show has been online for more than 4 years and presently focuses on legal technology startups under one year of age. The show promotes the legal technology journey in an effort to build community. Nick is an avid dog lover.

Disruptions in the Insurance Defense Legal Services Market

By Brian Kennel

For most of my professional life, I have helped small and mid-sized law firms take advantage of their professional opportunities and overcome their challenges. Now that I have a team of bright young people that bring fresh perspectives to our work, I realize that often, what I see as a need to adapt (change and stress), they see as normal and no big deal.

We have the good fortune of working with some of the most talented, honest and hard-working lawyers and staff in the legal industry. They take ownership of client problems and aggressively advocate on their behalf. To outsiders, it may appear many law firms just work out issues between wealthy institutions, but much of what our clients do eventually impacts real people.

The legal industry is often maligned from the perception that they mostly care about billing and profit. Of course, there are stories about lawyer overreach, questionable billing practices, and outright greed, but we rarely, if ever, encounter these behaviors in our work. We see an overwhelming majority of lawyers who care deeply about the quality of services they provide, the results they achieve, and the cost benefit if the services they provide.

Legal cost control

With the advent of super powerful software tools, clients can control their legal spend to the point it becomes counterproductive. For example, short term cost control and task level management can diminish the professional nature of the relationship and even accountability for final results. Is this an adaptability issue or is it a permanent diminution

of quality? If clients are adjusting their expectations and redefining quality as part of the bargain, does it even matter?

Insurance defense cost control

Some of the most aggressive cost control and case management approaches are found in the insurance defense services area. Insurance companies are sophisticated, high volume purchasers of legal services; so it makes sense they would want to control legal spend. These companies regularly balance risk/reward decisions, and while a lawyer may think a case is worth the costs of litigation, their clients often disagree. Lawyers must also put themselves in the clients' place to appreciate how their approach to a case might differ if they were underwriting the cost of the litigation and potential downside risk.

It is obvious by their behavior that many companies believe the relationship that develops between their claims management personnel and outside counsel can sometimes blur the cost-benefit relationship and cause accountability to slip. Most companies have litigation management departments and derivative bill review functions who are policy and procedure driven. Clearly, these companies believe it is beneficial to take a large portion of the legal spending decisions out of the direct control of claims personnel.

Due to this separation of powers, claims management personnel and their outside lawyers are often limited in their ability to properly manage the long-term outcome of a case. All too often it seems litigation management guidelines, which are beneficial and necessary to a point, become hard and fast rules that suggest the outcome of a case is secondary. When the legal relationship is overmanaged, clients are often deprived of the experience and training of their counsel.

Effects of overburdensome cost control

Perhaps this is just an intermediate step in a grand transformation. I can only imagine how it looked to the owner of a small hardware store when big box stores opened up down the street or how hard it is to deal with the competitive advantage of a massively powerful internet buying site. It is possible that everyone could benefit if we redefine what is important in the legal services space. But until that time, here are a few of the detrimental effects on the talent pool for insurance defense lawyers.

- Loss of passion for the work
- Lack of skilled trial lawyers
- Reduced competition resulting in insufficient quality choices in the market

- Reduced emphasis on insurance defense
- Defense lawyers who move to the plaintiff side
- Built-in advantages for plaintiff lawyers
- Reduced service for insureds
- Insufficient training and development
- Unmotivated lawyers who remain in the practice

Additionally, many good lawyers are aging and have grown tired of the micromanagement, insufficient respect and relative compensation. Some of these lawyers will continue to adapt, but due to all the counterproductive factors involved, many experienced and talented attorneys do not want to practice insurance defense.

Eventually, insurance companies will either pay more for the best lawyers or accept the consequences of a "pay for what you get" marketplace.

Is there a grand plan?

If the ultimate industry strategy for many cases is to achieve an acceptable average result obtained through using advanced automation processes (AI, Apps, Data Collection, and Algorithms), then, theoretically, the need for certain types of talent is diminished. In practical terms, legal training would shift from the interpersonal, talent-based aspects of advocacy to learning the tools and processes for achieving the desired predetermined results (feeding the algorithm). Pricing models can also evolve to a more uniform approach and away from hourly based approaches, ending the need for bill review.

Many strategies don't implement as radical transformative processes; instead, they happen over a period. Proving whether a course of action is beneficial typically requires significant data presented in a uniform way. Companies with many outside counsel relationships will likely have a tougher time aggregating data due to insufficient consistency from one firm to the next.

One likely evolutionary step, who some think is already happening, is to further consolidate work among a relatively few larger firms. Applied blindly, the need to accommodate data collection could outweigh selecting a law firm on traditional, sought-after qualifications.

To preserve a robust supply chain that includes all sized firms, the insurance industry or company could create or adopt a universal case management application (App) for use by outside legal counsel that would satisfy data collection and analysis needs while preserving

access to the best legal talent.

Case management and execution could also improve and create new value. To an extent, the bill review companies can provide uniform data across large industry sample sets now, but these data are limited to analysis after an event has occurred. Predictive data will add more value.

How should law firms proceed?
Law firms could also assess market trends and develop responsive Apps that could deliver cost efficiencies, satisfy data collection needs, and create margin without raising the price, but that would require significant investment in innovation. If lawyers are tired of the micro-management, relentless bill audit, and shrinking margins, then creating alternatives is a potential solution.

In the meantime, large law firm management teams already operating in the space might employ a strategy of amassing as much of their insurance client's or industry's demand as possible and once the market supply is diminished, raise rates. If clients are complicit in this strategy for their own reasons they may want to jump off at the raise rates part but may find themselves with reduced supply choices.

What can small law firms do?
Case management systems (better tools and processes)
Large law firms will suffer with long term pricing strategies that depress current profits so nothing is a foregone conclusion. Smaller law firms can still fight for position in this space by employing readily available technologies (case management systems) to satisfy the need for better information and by redesigning their cost structures to operate effectively at more competitive rates.

At a minimum, small firms should be proactive in providing clients with the following statistics using varied measurement periods to indicate trends.

- Average Days Files are Open
- Average Age of Open Files
- Number of Cases Resolved (relevant period by case type)
- Average Age of Closed Files (historical performance measurement)
- Average Timekeepers Per File
- Average Legal Fee by Case Type

Clients who receive these data will not only feel more confident in their buying decision, but will also likely share additional insights into their litigation management strategy. These new insights could provide clues about how to create future advantages.

Recruiting and training associates (better suited people)
Finding and retaining the right talent is difficult in any practice area. Typical recruiting criteria include law school, class rank, and special distinctions. Lateral hires are mostly about experience and track record. The interview process is normally a shuttle between offices, or a group interview mostly focused on likability and whether the candidate seems smart. Rarely is there an in-depth discussion of day to day work-life, daily stressors, and emotional suitability for the position.

Smaller firms do not have the luxury of hiring several associates in the hopes of finding one or two that succeed in the long term. Smaller firms should develop role specific criteria that consider, for example, the ability to juggle multiple priorities, flexibility, tolerance for repetitive tasks, ability to consistently follow rules and procedures, strong communication skills, and a willingness to embrace new technologies might outweigh some traditional qualitative factors.

Adjust compensation plans (aligning compensation and incentives with market factors)
Most firms either reward performance using billable hours, billings or collections (we will not address originations now). Rarely do we encounter any incentives for case management excellence, client reporting and communication, or guideline compliance. Firms who keep these statistics can reward and encourage efficient case handling, client care, and guideline compliance. Lawyers who are compensated for litigation management factors are more likely to excel in the insurance defense practice area, which should reduce turnover and improve client satisfaction.

Distributed staffing (redesigning cost structures)
Rarely do law firms operating in the insurance defense market compete on investments in office space and furnishings. They also do not compete on large pools of centrally located staff. Smaller firms should consider a branch/distributed office approach to mitigate travel time billing restrictions and to offer a more complete solution to clients. Larger central offices are no longer necessary to effectively serve clients and smaller firms can place staff geographically.

What about plaintiff lawyers?

Interestingly, the plaintiff's bar continues to get its act together and providing non-proprietary (available to anyone who wants to subscribe) case management tools like Litify and GrowPath, which were both developed by successful trial lawyers, and access to capital through collaborative case funding, savvy plaintiff-oriented banks, and private capital sources.

All these actions plus the aversion to litigation in the insurance industry adds up to an advantage for trial lawyers.

Other factors

External factors can accelerate the pace of change. For example, the global economic crisis of 2007/2008 had insurance companies taking an extremely hard line with their outside counsel. Rate reductions, freezes, slow pay, discounts for timely payment, and further pulling back from expensive litigation all happened at a rapid pace. These actions, however, sought to simply control cost and squeeze as much from their law firms as possible.

Law firms for the most part accepted the new terms without response. This climate has continued mostly unchecked, except that the long term damage to the market, which we discussed earlier, continues to occur. If there is a grand strategy, now is a good time to start rolling it out.

Advice for insurance defense lawyers

If you are a lawyer operating in this space and struggling to find satisfaction in your work, here are some options:

- Learn to adapt
- Embrace the stability and predictive nature of your work and express your creativity elsewhere
- Double down on service and quality for those clients measure and value it
- Build a better mousetrap (innovate)
- Limit the amount of insurance defense work you do
- Work toward moving up the client value chain - seek higher risk/reward work
- Create an exit strategy

If you are a new or young lawyer, you may not have these issues or you are well conditioned to the work. You may see opportunities in the volume-oriented nature of the work and have found ways to make the work profitable. My suggestion is you keep a close eye on your skill

development and advocacy skills.

Bright and passionate lawyers have a lot to offer the world even if the algorithm does not always value it.

About the Author:
Brian Kennel is Law Firm Management Consultant providing advice and implementation support for improving law firm operating results.
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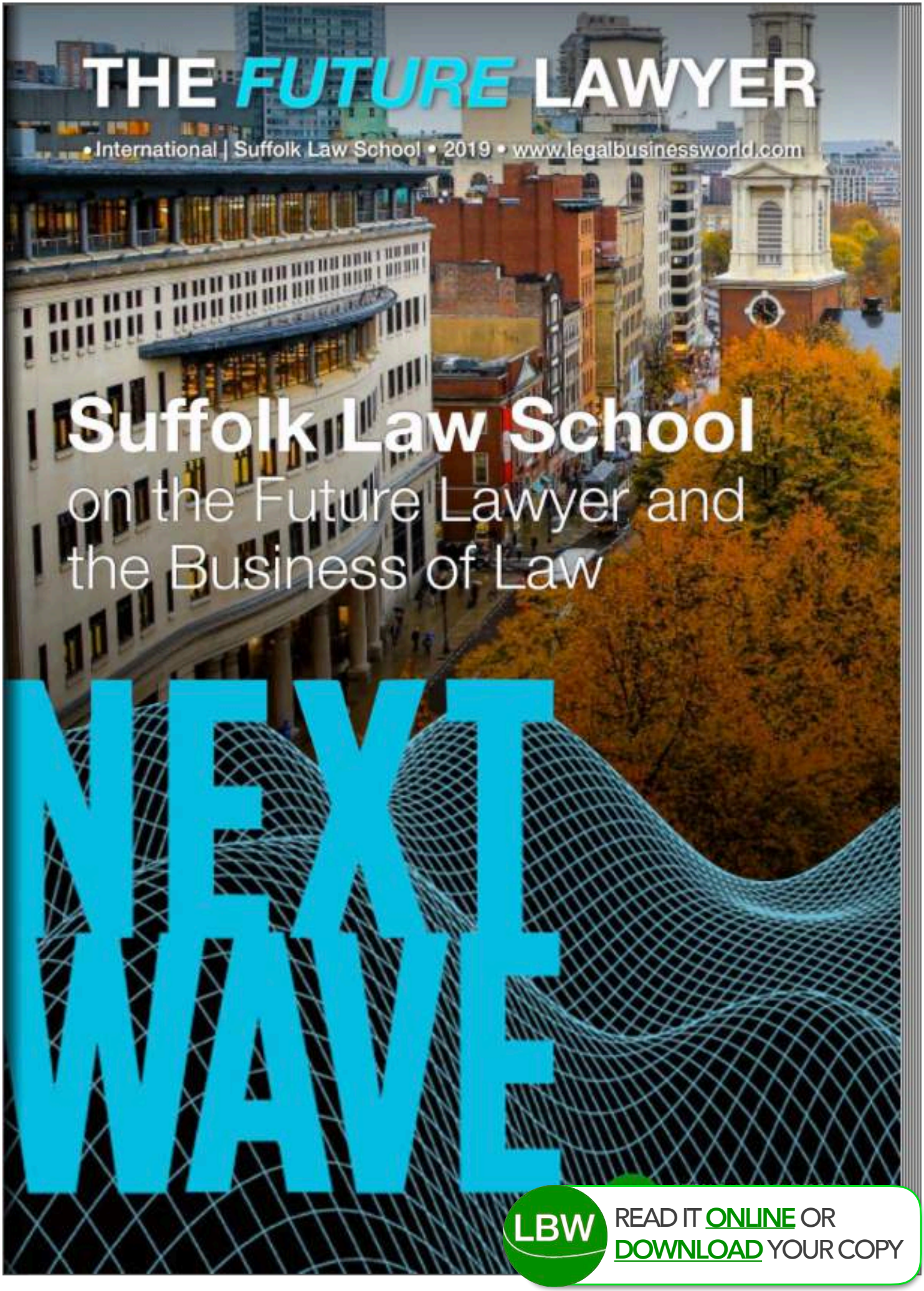
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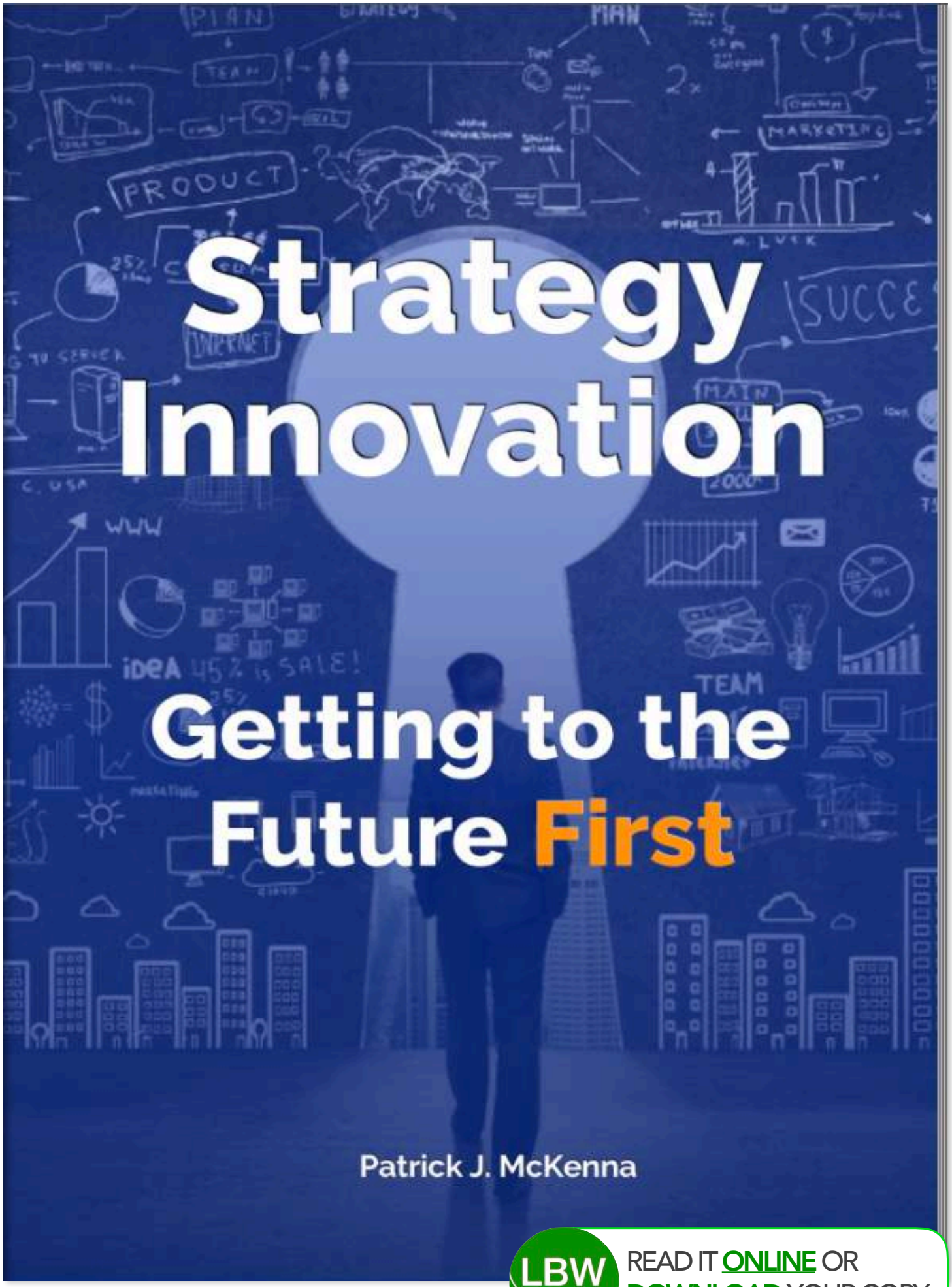

PORTRAIT OF A 21ST CENTURY LAWYER

VERSION 3.0

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